

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

JIMCY MCGIRT,)
)
 Petitioner,)
)
 v.) No. 18-9526
)
 OKLAHOMA,)
)
 Respondent.)

Pages: 1 through 91

Place: Washington, D.C.

Date: May 11, 2020

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

www.hrccourtreporters.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

JIMCY MCGIRT,)

Petitioner,)

v.) No. 18-9526

OKLAHOMA,)

Respondent.)

- - - - -

Washington, D.C.

Monday, May 11, 2020

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

1 APPEARANCES:

2

3 IAN H. GERSHENGORN, Esquire, Washington, D.C.;

4 on behalf of the Petitioner.

5 RIYAZ A. KANJI, Esquire, Ann Arbor, Michigan;

6 for the Muscogee (Creek) Nation, as amicus curiae,

7 supporting the Petitioner.

8 MITHUN MANSINGHANI, Solicitor General,

9 Oklahoma City, Oklahoma;

10 on behalf of the Respondent.

11 EDWIN S. KNEEDLER, Deputy Solicitor General,

12 Department of Justice, Washington, D.C.;

13 for the United States, as amicus curiae,

14 supporting the Respondent.

15

16

17

18

19

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	IAN H. GERSHENGORN, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	RIYAZ A. KANJI, ESQ.	
7	For the Muscogee (Creek) Nation,	
8	as amicus curiae, supporting	
9	the Petitioner	28
10	ORAL ARGUMENT OF:	
11	MITHUN MANSINGHANI, ESQ.	
12	On behalf of the Respondent	47
13	ORAL ARGUMENT OF:	
14	EDWIN S. KNEEDLER, ESQ.	
15	For the United States, as amicus	
16	curiae, supporting the Respondent	67
17	REBUTTAL ARGUMENT OF:	
18	IAN H. GERSHENGORN, ESQ.	
19	On behalf of the Petitioner	89
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument first this morning in Case 18-9526,
5 McGirt versus Oklahoma.

6 Mr. Gershengorn.

7 ORAL ARGUMENT OF IAN H. GERSHENGORN

8 ON BEHALF OF THE PETITIONER

9 MR. GERSHENGORN: Mr. Chief Justice,
10 and may it please the Court:

11 This case is resolved by the
12 fundamental proposition that decisions about
13 sovereign rights are for Congress to make and
14 Congress makes those decisions by speaking
15 clearly in the text. The decision below must be
16 reversed because the text makes clear that
17 Congress never terminated the Creek reservation
18 and never transferred federal criminal
19 jurisdiction to Oklahoma.

20 I have four basic points to make this
21 morning. First, the Creek Nation had a
22 reservation. The relevant treaties reserved the
23 lands from sale and solemnly guaranteed the
24 lands for the Creek to govern. The text of both
25 treaties and statutes expressly identified the

1 Creek land as a reservation. Nothing more was
2 needed.

3 Second, Congress did not establish --
4 disestablish that reservation. Indeed, Congress
5 considered hallmark language of disestablishment
6 and rejected it. Congress initially sought
7 cession yet instead provided only for allotment.
8 Then, when congressional inaction would have
9 dissolved the tribe, Congress instead preserved
10 the tribe and its government for all purposes
11 authorized by law, and it did so against the
12 backdrop of existing tribal authority to
13 legislate over reservation land. Those
14 congressional judgments should be respected.

15 Third, Congress did not transfer
16 criminal jurisdiction to Oklahoma. At
17 statehood, the Major Crimes Act established
18 exclusive federal jurisdiction over enumerated
19 crimes in "any state of the United States."
20 When Congress overrides the Major Crimes Act and
21 transfers jurisdiction to a state, it does so
22 expressly, and it did not do so here.

23 Finally, Oklahoma's rhetoric about
24 disruption does not change the result. On the
25 criminal side, this Court's decision in Ramos is

1 a complete answer, and on the civil side, the
2 main issues are tax and other regulatory issues
3 that are routinely resolved by tribal-state
4 agreements. In any event, Parker makes clear
5 that questions of sovereignty are distinct from
6 claims of reservation status.

7 This Court should resolve the
8 reservation question, leaving jurisdictional
9 disputes to Congress, the relevant sovereign,
10 and then for this Court to resolve if and when
11 they arise.

12 CHIEF JUSTICE ROBERTS: Counsel, the

13 --

14 MR. GERSHENGORN: So let me start this

15 --

16 CHIEF JUSTICE ROBERTS: -- State
17 argues that the territory should be analyzed as
18 a dependent Indian community under 1151 and not
19 as a reservation. They base this argument on
20 our decisions in Sandoval and Creek Nation and
21 1151 itself and the fact that the Creeks have
22 always maintained, have been adamant about the
23 fact that they are not reservation Indians.

24 Now you refer, of course, to the many
25 times in which the treaty is referred to as a

1 reservation, but what is your answer to the
2 State's analysis of our precedent?

3 MR. GERSHENGORN: So, Your Honor, I
4 think both the precedent and the language
5 support the idea that this is not a dependent
6 Indian community. What this Court said in
7 Venetie and what Judge -- then Judge Gorsuch
8 said in Hydro Resources is that the dependent
9 Indian community label is a catchall for tribes
10 that did not have a reservation and are not on
11 restricted lands. The best evidence of what
12 Congress thought about whether Creek lands were
13 a reservation under the statute is that Congress
14 referred to those lands as a reservation under
15 the statute.

16 With respect to Sandoval and the other
17 cases, it is crystal-clear that when Sandoval
18 and those cases are using the term "dependent
19 Indian community" that they are describing
20 tribes and other groups that are within
21 Congress's broad power to legislate for -- for
22 tribes broadly. They are not excluding the --
23 the Creek.

24 Indeed, and --

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas?

3 JUSTICE THOMAS: Yes, counsel. In
4 Solem and in Parker, those cases only involved
5 the disposition of surplus land. And, here, of
6 course, there's much, much more being done in a
7 whole series of statutes involving both
8 sovereignty and the allotment of land.

9 Can you point to any case in which
10 we've applied the Solem fact framework to a case
11 that does as much as this -- as being -- as is
12 being done in this case?

13 MR. GERSHENGORN: So, Your Honor, I
14 think the key point on -- the -- the -- the key
15 point on the Parker/Solem analysis is, as your
16 -- as Your Honor pointed out in that opinion,
17 that those are not -- that that analysis doesn't
18 derive from anything special about -- about how
19 much work Congress is doing.

20 The reason the Court has always
21 required plain text is because treaty rights are
22 at issue and plain text is required to abrogate
23 treaty rights and because sovereign rights are
24 at issue and plain text is required to abrogate
25 sovereign rights.

1 So there's nothing magic about Parker
2 and Solem in terms of whether they're dealing
3 with surplus lands or not. The key point in
4 Parker and Solem is that plain text is required
5 to do the kinds of transfers that are at issue
6 here.

7 And when you look at the plain text, I
8 think this is a -- this case is even stronger
9 than Your Honor's opinion in Parker for three
10 main reasons. First, of course, is that the
11 tribe was not absent from the land in the same
12 way that the tribe was in Parker.

13 Second, the land here was allotted in
14 -- almost entirely to the tribe -- to tribal
15 members themselves, to Indians.

16 And, third, Congress took steps in
17 1906 to preserve the tribe.

18 And I guess the thing I would point
19 to, Your Honor, when you ask about whether there
20 are cases like this, I think this is stronger
21 than case -- other cases because the question
22 isn't just what did Congress fail to do but how
23 much --

24 JUSTICE THOMAS: I don't mean to
25 interrupt you, but I do want to get this point

1 in, that in -- in Parker, we were only dealing
2 with one allotment statute that was disposing of
3 surplus land. Here, we're dealing with a series
4 of statutes that go both to land, the allotment
5 of land, and to the reduction in the authority
6 of the tribe. That's what I mean.

7 MR. GERSHENGORN: So I understand
8 that, Your Honor. And I think the critical
9 point is that Congress actually preserved the
10 tribe when it had the chance when inaction would
11 have dissolved the tribe. And so, actually, I
12 think that makes this stronger than in other
13 cases because Congress took --

14 CHIEF JUSTICE ROBERTS: Thank you.
15 Thank you, counsel.

16 MR. GERSHENGORN: -- deliberate action
17 when this action dissolved --

18 CHIEF JUSTICE ROBERTS: Thank you.
19 Justice Ginsburg?

20 JUSTICE GINSBURG: Counsel, you don't
21 claim immunity from prosecution for a major
22 crime. I think your position is that the
23 federal prosecutor could have charged your
24 client?

25 MR. GERSHENGORN: That's absolutely

1 correct, Your Honor.

2 JUSTICE GINSBURG: Federal penalties,
3 as I understand it, are at least as harsh as the
4 state and in both forms, state and federal, you
5 would have due process protections.

6 So how are you harmed by the fact that
7 you were tried in the state court rather than
8 the federal court when you were exposed to the
9 same -- at least the same penalties in both?

10 MR. GERSHENGORN: So, Your Honor, I
11 think the harm flows anytime that a defendant, a
12 criminal defendant is tried by a sovereign that
13 lacks jurisdiction. I don't think that we have
14 ever -- that this Court has ever said that
15 there's a kind of harmless error analysis when a
16 -- when a sovereign asserts jurisdiction,
17 particularly criminal jurisdiction, over a
18 defendant and that you would look to see, well,
19 are the penalties the same.

20 Of course, it is a different set of --
21 I mean, it's a different juror pool, it's a
22 different -- it is a different set of potential
23 penalties, and so I guess I don't think that the
24 fact that -- that there would be a rigorous
25 trial in federal court suggests that you would

1 overlook the absence of jurisdiction.

2 Indeed, it seems to me to make this
3 case even easier in some ways because we are not
4 claiming an immunity, as Your Honor pointed out,
5 and, indeed, there would be a retrial in federal
6 court if the Court were to --

7 JUSTICE GINSBURG: Counsel --

8 MR. GERSHENGORN: -- to reverse.

9 JUSTICE GINSBURG: -- what makes this
10 case hard is that there have been hundreds,
11 hundreds of prosecutions, some very heinous
12 offenses of the state law. On your view, they
13 would all become undone.

14 And if you compare that to the
15 situation in our recent Ramos case where there
16 were the -- there's a question about redoing
17 already tried cases, here, the Ramos
18 retroactivity pales in comparison to what is
19 involved here, hundreds of prosecutions, for
20 murder, for terrible sexual offenses.

21 These would all have to be done years
22 later when the witnesses may not be there
23 anymore. It's hundreds of cases that --

24 MR. GERSHENGORN: So, Your Honor,
25 there are hundreds of case -- there may be

1 hundreds of cases. Actually, in -- in truth, we
2 don't know how many cases. The State, which has
3 the numbers, hasn't suggested that there are
4 anything -- been able to document there are
5 anything like hundreds of cases, but there are
6 fewer than in Ramos.

7 And in any event, what this Court said
8 in Ramos was that that provides no reason to
9 disregard the plain text. To be sure, that
10 there would be --

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel. Thank you, counsel.

13 Justice Breyer?

14 JUSTICE BREYER: Good morning,
15 counsel. A minor point, but one of the -- one
16 of the arguments, I think, is that whether
17 they're a reservation or not, Congress wanted
18 state courts to try the major state crimes.

19 And in reference to that, I think the
20 government cites Felix Cohen, who was a great
21 expert in this area. And I looked at his
22 letter. He does seem to say that.

23 So, if you have any comments about
24 that, about his argument or about that
25 particular aspect of it, I'd like to hear them.

1 MR. GERSHENGORN: So, Your Honor, I
2 think that the -- the -- the law is clear that
3 Congress did not intend for crimes -- for tribal
4 crimes to be tried. And I think this is one of
5 the most straightforward statutory construction
6 cases this Court will see.

7 The Major Crimes Act at statehood
8 provided that it applied to any state of the
9 United States. There is no exception for
10 Oklahoma, and there was none before, at, or
11 after statehood.

12 Second, what they have pointed to,
13 what the other side has pointed to, is what
14 happened before statehood, and what happened
15 before statehood was that crimes were being
16 prosecuted in the name of the United States in
17 courts set up by Congress, applying federal law,
18 which the -- which had adopted Arkansas law as
19 the rule of decision.

20 It is the exact opposite of conferring
21 jurisdiction on the states to try.

22 Third, there was nothing in the
23 Enabling Act that would have changed that.
24 Indeed, the Enabling Act sent to federal courts
25 all cases which, had they been committed in a

1 state, would have been subject to federal
2 prosecution. That describes the Major Crimes
3 Act perfectly.

4 And finally, Your Honor, when Congress
5 transfers jurisdiction to a state, it does so
6 expressly. In Nagonset, which this Court
7 described as the first major transfer of
8 jurisdiction, the language used was jurisdiction
9 is conferred. In Public Law 280, the states
10 shall have jurisdiction.

11 In New York, New York shall have
12 jurisdiction. And even in -- with respect to
13 Oklahoma, in 1908, when they transferred -- when
14 Congress transferred probate jurisdiction, it
15 said the -- that the Oklahoma courts shall have
16 jurisdiction.

17 And so tribal --

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Justice Alito?

21 JUSTICE ALITO: You referred to the
22 Oklahoma Enabling Act, but the language in that
23 is that a case would be -- a case that was
24 pending in the territorial court at the time of
25 statehood would be sent to one of the new

1 federal district courts or to one of the new
2 state courts depending on where it would have
3 been prosecuted if it had been prosecuted in a
4 state.

5 It doesn't say in a state in Indian
6 Country. It says in a state. So isn't the
7 clear meaning of that that cases in Oklahoma
8 would be treated like cases anyplace else?

9 MR. GERSHENGORN: So, Your Honor, I
10 don't -- they -- treated like anyplace else,
11 meaning it was subject to the Major Crimes Act.
12 So I do -- I agree with you that there is no
13 Oklahoma exceptionalism, but I think that cuts
14 exactly in our favor.

15 What Oklahoma is saying is that,
16 uniquely among all the states in the union, it's
17 exempt from the Major Crimes Act. I think the
18 Enabling Act, the language Your Honor is citing,
19 does exactly the opposite.

20 JUSTICE ALITO: How about --

21 MR. GERSHENGORN: The language says --

22 JUSTICE ALITO: -- what it said in the
23 1897 statute, which said that "the laws of the
24 United States enforced in the territory shall
25 apply to all persons therein, irrespective of

1 race."

2 And yet you're saying that cases at
3 the time of statehood would be treated based on
4 race. How can that be consistent with the 1897
5 Act?

6 MR. GERSHENGORN: Because I think the
7 1897 Act, Your Honor, extends if -- what the
8 U.S. -- the 1897 Act does is extend both U.S.
9 law and -- and the Arkansas law, regardless of
10 race.

11 But it did not eliminate any language
12 that was in the Major Crimes Act already. That
13 was a portion of U.S. law. But, regardless,
14 Your Honor, of what happened pre-statehood -- I
15 mean, we can debate that, but regardless of what
16 happened pre-statehood, there's no disagreement
17 that the Major Crimes Act applies of its own
18 term at statehood.

19 Statehood itself was a major event
20 that transferred -- that -- that, obviously,
21 transferred Oklahoma from a territory to a
22 state. And at that point --

23 JUSTICE ALITO: What happened after --
24 what happened after statehood? Can you cite a
25 single case under the Major Crimes Act that was

1 transferred to or thereafter prosecuted in
2 federal court?

3 MR. GERSHENGORN: No, Your Honor. But
4 this Court has made clear that events on the
5 ground don't override the text. What --

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Justice Sotomayor?

9 MR. GERSHENGORN: -- what we never
10 interpret criminal statutes to be --

11 CHIEF JUSTICE ROBERTS: I'm sorry.

12 MR. GERSHENGORN: -- what the
13 executive --

14 CHIEF JUSTICE ROBERTS: Counsel, thank
15 you.

16 Justice Sotomayor?

17 JUSTICE SOTOMAYOR: Counsel, Justice
18 Ginsburg pointed out that some of the penalties
19 in federal court would be higher than those
20 imposed in state court.

21 Am I -- do you disagree that some
22 defendants who might be entitled to raise -- if
23 you were to win, some defendants who would be
24 entitled to challenge their convictions would
25 choose not to because the risk would be too high

1 for them?

2 MR. GERSHENGORN: I think that's
3 exactly right, Your Honor. I think that there
4 are -- that federal penalties will often be
5 higher. I think a number of defendants will
6 have already served large chunks of their -- of
7 their -- of their sentence. And their ability
8 to seek relief in federal court at least will be
9 limited by AEDPA. So I think there are reasons
10 to doubt the extent of the State's disruption
11 argument here.

12 And, again, remember the numbers are
13 all in the State's control. And so, while we've
14 been hearing, you know, both in the Murphy
15 argument and here about, you know, murderers and
16 rapists getting through, in fact, there is no
17 evidence that the State has put forward that
18 they will be in large numbers and the kinds of
19 habeas petitions that one would expect to see,
20 the kind of tsunami that -- that has been
21 predicted just hasn't materialized.

22 So I -- I agree with Your Honor's
23 question there.

24 JUSTICE SOTOMAYOR: Number two,
25 there's so much discussion about the dependent

1 Indian community. Am I to take it that your
2 argument is that that's almost irrelevant?

3 MR. GERSHENGORN: It is almost
4 irrelevant. It's both wrong and irrelevant, but
5 I'll hit the irrelevant point first.

6 Regardless of what you call it, as my
7 colloquy with Justice Thomas tried to get at,
8 the -- the -- the reason we have a plain text
9 requirement has less to do with whether you call
10 it a reservation or a dependent Indian community
11 and everything to do with the fact that these
12 boundaries were set up by Congress, and so, if
13 you are going to undo that, Congress needs to
14 speak and Congress needs to speak clearly.

15 We're talking about transfers of
16 sovereign rights, and that has to be done
17 clearly in the text. And you can call it a
18 reservation or a dependent Indian community.
19 The test would be the same.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Justice Kagan?

23 JUSTICE KAGAN: So, if I could pick up
24 on that, Mr. Gershengorn, you said irrelevant
25 and wrong. And the Chief Justice asked you

1 about our two cases, Sandoval and Creek Nation,
2 and I wasn't quite sure I understood your answer
3 to him about how those cases were using the term
4 and whether that is consistent or inconsistent
5 with your argument.

6 MR. GERSHENGORN: So those -- it is
7 consistent with our argument. As I -- as I read
8 both Sandoval and Creek Nation, it is using the
9 term "dependent Indian community" to -- to
10 describe the tribes -- the -- basically, tribes
11 broadly, that those are -- are communities over
12 which Congress has the power to legislate under
13 its -- under its Indian-related powers.

14 In other words, it was not using it in
15 sort of the more narrow and technical sense that
16 Congress did when it enacted the 1948 statute.
17 So, in other words --

18 JUSTICE KAGAN: In other words, it's
19 -- it's supposed to be an umbrella term that in
20 --

21 MR. GERSHENGORN: That's exactly
22 right, Your Honor.

23 JUSTICE KAGAN: -- that integrates our
24 standard reservations?

25 MR. GERSHENGORN: Exactly. It

1 includes standard reservations -- it includes
2 but is not limited to standard reservations.
3 The whole point --

4 JUSTICE KAGAN: And how do we know
5 that?

6 MR. GERSHENGORN: Because that's what
7 the Court said in Sandoval, is that the -- is
8 that -- that it was -- it was trying to figure
9 out whether Congress had the power to legislate
10 for the Pueblos, and -- and what it said was
11 Congress has the power to legislate both
12 domestic and -- old and new communities and use
13 the term "dependent Indian communities."

14 But, again, regardless, the Tribe has
15 always -- the Creek have always been -- the
16 reason the -- the Pueblos were compared to the
17 Creek is because the Creek were assumed to be
18 the quintessential reservation. In other words,
19 the fee patent in the Pueblos couldn't be a
20 problem because it wasn't a problem for the
21 Creeks, and everybody understood the Creeks were
22 -- had a reservation. I think that was the
23 sense in which the Court was using the term.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Justice Gorsuch?

2 JUSTICE GORSUCH: Hello?

3 CHIEF JUSTICE ROBERTS: Justice
4 Gorsuch?

5 JUSTICE GORSUCH: Thank you, Chief.

6 Counsel, we've heard a little bit
7 about it today, but I'd -- I'd like to give you
8 a chance to discuss further the argument that
9 there are going to be terrible practical
10 consequences that would follow from a ruling for
11 your clients. We can put aside the criminal
12 convictions -- you've addressed those -- but
13 just the on-the-ground difficulties we've heard
14 about in administering Tulsa.

15 A, do you want to respond to the --
16 that parade of horrors generally? And, B, how
17 should that inform our analysis of and
18 interpretation of a statute and a treaty?

19 MR. GERSHENGORN: So, Your Honor, I
20 would -- broadly, here's what I would say:
21 There are -- there -- there will, of course, be
22 consequences from the Court's ruling, as there
23 are from any of the Court's rulings, and those
24 consequences are not trivial, but nor are they
25 existential, nor, indeed, overly serious.

1 But, more important, they are the
2 kinds of consequences that happen routinely in
3 Indian Country. They are routinely resolved by
4 agreement in Oklahoma, as Representative Cole's
5 brief indicates, and throughout the nation, as
6 the MCI brief and the experience of Tacoma
7 indicates. And -- and these are routinely
8 addressed by Congress.

9 With respect to how it should --
10 should influence the text, it should not affect
11 the reading of the text, and that's true for
12 several reasons. First, the text is what the
13 text is, and this Court's job is to interpret
14 it.

15 Second, in Parker itself, the Court
16 distinguished the two. It separated reservation
17 status from questions of sovereignty and the
18 impact on the ground. And I think this Court
19 should take the same approach. Those two
20 questions are distinct.

21 And then, third, it shouldn't affect
22 this Court's analysis of the text because
23 Congress is in the best place to change the text
24 and add text if it wants. And, indeed, Congress
25 routinely does in Indian Country, and Congress

1 has in Oklahoma. There are Oklahoma-specific
2 statutes that address environmental matters,
3 that take power -- that ensure that power stays
4 with the state, not the tribe. Congress knows
5 how to do this, and the job to fix any
6 consequences if the Court perceives them is with
7 Congress.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 JUSTICE GORSUCH: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Kavanaugh?

13 JUSTICE KAVANAUGH: Thank you, Chief.

14 And good morning, Mr. Gershengorn. I
15 want to talk a bit about the history and maybe
16 make a comment, and you and other -- your
17 colleagues can react.

18 But this is not a situation where
19 there's a reservation in an existing state and
20 Congress has arguably diminished a reservation.
21 This is a case with a territory that, by 1890,
22 Indian territory was predominantly white, about
23 60 percent of the population, also a significant
24 black population, about 10 percent, and about
25 30 percent Indian.

1 And the question, as of 1890, how do
2 we get there to that situation, you go back to
3 the treaties of 1832 and 1833 that grant the
4 Creeks and the Five Tribes land, but then the
5 Civil War is key, and the tribes, the Five
6 Tribes, all align with the Confederacy in the
7 Civil War. The tribes have black slaves, lots
8 of black slaves. And then there's a new treaty
9 in 1866 because the United States is not happy
10 that the tribes have aligned with the
11 Confederacy.

12 Why does that matter for us? Because,
13 in that new treaty in 1866, it grants
14 rights-of-way to railroads, the railroads lead
15 to settlements, the settlements lead to new
16 towns that are predominantly white. So, by
17 1890, you have an odd situation of an Indian
18 territory nominally that's predominantly white.

19 So Congress's options at that time are
20 -- are to remove the -- the whites, to remove
21 the Indians. Neither of those was going to
22 happen. So the other remaining options were
23 tribal government over non-Indians, which, of
24 course, is contrary to tradition, or to create a
25 new state. And Congress chose the new state

1 option, it seems, and then had a lot of things
2 that happened over the next 17 years.

3 So I just wanted to get that history
4 out there because I think we're talking about
5 Indian territory and reservations when, in fact,
6 it was 60 percent white, 10 percent black,
7 30 percent Indian in the relevant territory.

8 CHIEF JUSTICE ROBERTS: Counsel, you
9 have time for a very brief comment.

10 MR. GERSHENGORN: So I'll just say
11 very briefly, Your Honor, after statehood, the
12 -- 85 percent of the Indian territory remained
13 in Indian hands, immune from taxation. The idea
14 that statehood and reservation status are
15 inconsistent is refuted by the fact that
16 Tennessee was 75 percent reservation at
17 statehood. At statehood in South Dakota, it was
18 47 percent reservation.

19 I think Your Honor's sense of the
20 history and the incompatibility of reservations
21 with statehood is not historically accurate.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Mr. Kanji.

25

1 ORAL ARGUMENT OF RIYAZ A. KANJI
2 FOR THE MUSCOGEE (CREEK) NATION,
3 AS AMICUS CURIAE, SUPPORTING THE PETITIONER

4 MR. KANJI: Thank you, Mr. Chief
5 Justice, and may it please the Court:

6 I would like to go straight to Justice
7 Thomas's question about the governing framework
8 here and make three points. First, there is
9 nothing radical about the Parker/Solem
10 framework. It fused two ordinary principles of
11 statutory construction and fundamental
12 principles regarding the separation of powers.

13 The state can't win under that test,
14 and, hence, it has advocated various amorphous
15 alternatives. I think, Justice Thomas, nothing
16 about the fact that there was a series of
17 statutes here changes the -- the fundamental
18 principles that should apply.

19 There are, to answer your question
20 directly, other cases that have involved a
21 series of statutes. The Mast case involved a
22 tremendous amount about the history of
23 California's series of statutes and executive
24 orders over time.

25 Solem involved the creation of a -- of

1 a reservation only eight months before
2 statehood. Every state likes to claim that its
3 history is exceptional, but there's nothing
4 about Oklahoma here that should cause a
5 divergence from this Court's test.

6 In the past, we --

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel. I'd -- I'd like to return to Justice
9 Alito's question. Congress passed legislation
10 at the turn of the prior century saying that the
11 United States laws and the laws of Arkansas,
12 which would be applied in Oklahoma, would apply
13 to all persons therein, irrespective of race.

14 Now, if you prevail, the laws in the
15 eastern half of Oklahoma will be different. The
16 applicable law will be different, dependent upon
17 race. So how is that consistent with Congress's
18 legislation?

19 MR. KANJI: Thank you, Mr. Chief
20 Justice. It's a critical question. What the
21 1897 statute did was to apply federal law,
22 irrespective of race, the territorial law and
23 Arkansas law as assimilated.

24 There was nothing radical about that.
25 Under the General Crimes Act and the

1 Assimilative Crimes Act, state law was often
2 applied where federal law did not exist.

3 But then what happens, of course, is
4 this watershed moment of statehood, and
5 statehood always changes the status quo. And
6 when it comes to Indians, what it does typically
7 is reserves federal power over the Indians
8 while, of course, giving state power over
9 non-Indians to the states.

10 And there's nothing in the Enabling
11 Act or the Five Tribes Act that suggests that
12 that status quo, the normal way of dealing with
13 it, was supposed to be departed from.

14 CHIEF JUSTICE ROBERTS: But I -- I
15 would like an answer to the precise question,
16 which is the law would be different in eastern
17 Oklahoma depending upon race, right?

18 MR. KANJI: Well, under the Enabling
19 Act, yes, the -- the transfer to the state was
20 of cases that would arise under state law. What
21 the federal courts retained were cases arising
22 under federal law. And that, of course,
23 included the Major Crimes Act and the -- and the
24 General Crimes Act.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas?

3 JUSTICE THOMAS: Yes, Mr. Kanji, a
4 brief question, and this is just -- it's not
5 necessarily dispositive of this case, but I'm
6 interested in your answer.

7 Do you think a tribe can be
8 effectively divested of title to land, to its
9 land and its sovereignty, and still retain the
10 status of reservation?

11 MR. KANJI: It's a -- it's a
12 critically interesting question, Your Honor.
13 All -- all disestablishment cases involve a
14 transformation of title. Whether we're talking
15 about trust cases or fee pay cases, Congress was
16 getting rid of communal proper -- title and
17 transferring title to individuals.

18 So the question this Court resolves in
19 that regard is whether Congress also meant to go
20 beyond that and alter reservation boundaries
21 which were so there. And, here, where we simply
22 are talking about the allotment and the opening
23 up of small town sites to non-Indian settlers,
24 that falls squarely into the rubric that this
25 Court has designed where reservations have

1 remained intact.

2 With respect to sovereignty, if a
3 sovereignty was to be completely divested -- and
4 that's not what happened here -- but, if it was,
5 I think the question this Court would ask is
6 whether the federal government still meant to
7 maintain the reservation for its own purposes.

8 If it didn't, then the reservation
9 would dissolve. Here, if the tribe had been
10 dissolved, the treaties make very clear that the
11 reservation itself would have evaporated, but --
12 but -- and -- and I understand this is not the
13 premise of your question, that is not what took
14 place here. The 1901 and 1906 acts clearly
15 maintained a quantum of tribal governmental
16 power.

17 JUSTICE THOMAS: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Ginsburg?

20 JUSTICE GINSBURG: If you -- you are
21 right, then what becomes of all the state tribal
22 cooperative agreements that we're told about if
23 the state lacks authority to apply its own law
24 with increased territory, remaining as a cession
25 to everything except what was given in the Civil

1 War.

2 Were all of the -- we're told that
3 there are many, many state tribal cooperative
4 agreements, but if the state lacks authority to
5 apply its own law, what becomes of -- of all
6 those state tribe cooperative agreements?

7 MR. KANJI: The -- the agreements,
8 Your Honor, will remain in full force and
9 effect. And this is critical. If we prevail,
10 state law does not evaporate in the reservation.
11 Under this Court's doctrines, state law applies
12 in many situations with respect to -- especially
13 with respect to the non-Indians in the area.

14 And that's what leads to these
15 cooperative agreements. Reservations involve
16 the different jurisdictions all having
17 authority, and that has been the premise of
18 shared jurisdiction as underpinned these
19 cooperative agreements.

20 And the best thing I can point you to
21 is not my words but the words of Congressman
22 Cole's brief. And that's a remarkable brief. I
23 think very few briefs like that have been filed
24 in this Court in the area of state tribal
25 relations where you have senior members of

1 Congress, former governors, former state
2 legislators saying, please do not disestablish
3 this reservation because the exercise of tribal
4 sovereignty in cooperation with the state has
5 underpinned these agreements.

6 And the authors of that brief were the
7 authors of many of the agreements on the state
8 side. And it's this premise of shared
9 jurisdiction that has allowed for shared
10 governance in Oklahoma to the benefit of all
11 citizens there. And just as --

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Breyer?

15 JUSTICE BREYER: So I'm still
16 interested in this claim the State makes that
17 whether it's a reservation or not a reservation
18 is beside the point, that all we have to decide
19 here is whether Congress gave to a state court
20 the power to try the state criminal crimes.

21 And Felix Cohen points to three things
22 where he thinks the answer to that question is
23 yes, seems to. First, they abolished tribal
24 courts and put the criminal jurisdiction in the
25 Indian court, the Indian territory courts, which

1 are federal courts.

2 Then, in the 1906 Act, it says that
3 those territorial courts, which are federal,
4 have the power to try state law cases. Now
5 they're not called state law cases then.
6 They're called laws of the territory of
7 Oklahoma.

8 And then, in the 1907 Act, which is
9 after, you know, the Enabling Act, it says all
10 causes, civil or criminal, shall be proceeded
11 with, held and determined by the courts of the
12 state coming about, the successors of the
13 district courts of the territory of Oklahoma,
14 and the United States courts in the Indian
15 territory.

16 So it's rather ambiguous, this last
17 thing. But given the practice and given Felix
18 Cohen and given you could read it that way, what
19 do you think?

20 MR. KANJI: I -- Your Honor, it would
21 make my life much easier in this case if I could
22 say there was plain text that had transferred
23 jurisdiction to the state over the Indians. As
24 you know, there would be nothing inconsistent
25 with that and reservation status.

1 JUSTICE BREYER: No.

2 MR. KANJI: But we simply can't find
3 that text. I think the operative text, as
4 Justice Alito said, ends up being the amended
5 Section 16 of the Enabling Act, prosecutions for
6 all crimes which had they been committed in the
7 state would have been cognizable in the federal
8 courts.

9 CHIEF JUSTICE ROBERTS: Justice Alito?
10 Justice Alito?

11 Justice Sotomayor?

12 JUSTICE SOTOMAYOR: Counsel, could you
13 finish your answer to Justice Breyer, please?

14 MR. KANJI: Absolutely, Justice
15 Sotomayor. The cases that would have been
16 cognizable in federal court, if Oklahoma had
17 been a state, included prosecutions under the
18 Major Crimes Act or the General Crimes Act. The
19 Enabling Act is very clearly saying that those
20 are to be transferred to federal court.

21 As to the practice, this is critical.
22 Nationwide, around the nation, states were
23 arrogating criminal jurisdiction to themselves
24 and the federal government was abdicating it,
25 even in cases where the reservations clearly

1 remained intact. That happened in South Dakota,
2 the Solem case. That happened in Nebraska, the
3 Parker case. That happened in Washington State,
4 the Seymour case. That happened in Mississippi,
5 United States v. John case. In all four of
6 those cases, this Court unanimously, across
7 different eras, different compositions of this
8 Court, paid no heed to that practice for this
9 fundamental reason: the acts of Executive
10 Branch officials cannot subvert the will of
11 Congress. Those acts of Executive Branch
12 officials do not run the gauntlet of
13 bicameralism and presentment.

14 And here is all the more reason not to
15 pay those heed. We know -- we know that federal
16 officials were subverting the will of Congress
17 in Oklahoma. After statehood, they would not
18 allow the Creek Nation to hold elections for its
19 chief, for its national council, even though the
20 Five Tribes Act clearly preserved those powers.

21 So why we should pay heed to the acts
22 of federal officials when they were clearly
23 acting illegally is something that the state has
24 -- has never explained.

25 JUSTICE SOTOMAYOR: Counsel, could we

1 go back to Justice Thomas's question? Am I to
2 understand that in existing reservations outside
3 of this Creek Nation issue, there are fee-simple
4 possessions by non-Indians, non-Indians are
5 living, working on those reservations? And am I
6 to understand there's concurrent federal, state,
7 and Indian jurisdiction over many of the issues
8 involved with those people?

9 MR. KANJI: Correct, Your Honor.
10 Wherever there's fee-simple land in -- in a
11 reservation, there is concurrent jurisdiction.

12 JUSTICE SOTOMAYOR: So you really
13 can't tie --

14 CHIEF JUSTICE ROBERTS: So, Justice
15 Alito?

16 JUSTICE ALITO: Am I correct that more
17 than 90 percent of the people who live in the
18 area directly affected by this case are not
19 members of the Creek tribe?

20 MR. KANJI: That is correct, Your
21 Honor.

22 JUSTICE ALITO: Well, what would you
23 say to those people when we -- if we decide this
24 case in your -- in your favor? Won't they be
25 surprised to learn that they are living on a

1 reservation and that they are now subject to
2 laws imposed by a body that is not accountable
3 to them in any way?

4 MR. KANJI: There -- there are a
5 number of responses, Your Honor. First, very
6 little will change for them. Certainly, very
7 little to the bad will change for them. They
8 will largely remain subject to state law. They
9 will benefit in significant ways from
10 reservation status. Justice Breyer asked a
11 question at the last argument about the Tulsa
12 businessman. Well, that businessman could wake
13 up the day after the argument and qualify for
14 enterprise grants that attach to reservation
15 status.

16 JUSTICE ALITO: But what -- what would
17 be the -- what will be the extent of the tribe's
18 authority over these non-Indians? For example,
19 if any member of the tribe has a contract
20 dispute with a non-member, say it's about an
21 employment contract or a lease or the purchase
22 of goods, will the -- the tribal member be able
23 to sue the non-Indian in tribal court under
24 tribal law?

25 MR. KANJI: In -- no, Your Honor. In

1 -- assuming that this takes place on fee lands,
2 which is the -- as you've noted, the majority of
3 lands in the reservation, under this Court's
4 precedents, it's clear that absent affirmative
5 consent, no, that case would proceed in state
6 court.

7 The tribe presumptively -- tribal law
8 presumptively would not apply to non-Indians
9 with respect to activities taking place on fee
10 land.

11 JUSTICE ALITO: Well, if this were a
12 different reservation and a non-Indian chose to
13 do business there, knew that he or she was
14 entering a reservation, was doing business
15 there, that would be considered to be consent,
16 would it not?

17 MR. KANJI: Well, the -- this Court's
18 precedents are, honestly, a little unclear on
19 that. But, if there was some form of
20 affirmative expression of consent, that would
21 bring the case within tribal jurisdiction.

22 JUSTICE ALITO: But there will be --

23 CHIEF JUSTICE ROBERTS: Justice Kagan?

24 JUSTICE KAGAN: Mr. Kanji, could I ask
25 you to continue and -- you're talking about the

1 consequences of this, and focus particularly
2 about adoptions and foster care proceedings,
3 because I know there's been some concern about
4 that.

5 MR. KANJI: Thank you, Your Honor.
6 There -- there's been some, well, frankly,
7 rhetoric about that. But it's misplaced. On
8 the ground, the state agency, the Health and
9 Human Services Agency, and the Nation cooperate
10 in every ICWA case. They have a terrific
11 relationship, and they have both been involved
12 in the placement of Indian children.

13 That will not change if the
14 reservation boundaries are affirmed. There are
15 various mechanisms to formalize that -- those
16 agreements. Section 1919 allows the state and
17 the Nation to continue sharing jurisdiction, for
18 the state courts to retain jurisdiction where
19 there are existing placements, or under
20 Section 1915 for the Nation to ordain those
21 placements.

22 There is simply no cause to think that
23 existing placements will be disrupted. That is
24 not in the interests of the Nation, the parents,
25 or the children, and it will not happen.

1 JUSTICE KAGAN: And with respect to
2 all of these disruption questions, what role do
3 you think that our decision in City of Sherrill
4 plays?

5 MR. KANJI: Well, I -- Sherrill has a
6 -- has a -- Sherrill is always in the room when
7 the states and the tribes are negotiating
8 agreements. It's really, honestly, a thumb on
9 the scale on the side of the states. So, when
10 it comes to all the fabric of cooperative
11 agreements we have in place currently, those
12 will continue. We have terrific working
13 relationships, as the Cole brief exemplifies,
14 and it will continue to play that role.

15 Now, if there were ever a situation
16 where the Nation were to assert sovereignty in a
17 way that went beyond the bounds of those
18 agreements and that the state took umbrage with,
19 you know, Sherrill is an arsenal in -- in the
20 state's --- that the states can employ in -- in
21 those stations.

22 But what Sherrill makes very clear is
23 that there's a clear distinction between
24 reservation boundaries and whether they exist or
25 not and what equitable defenses might apply to

1 the assertion of tribal authority within those
2 boundaries.

3 CHIEF JUSTICE ROBERTS: Justice
4 Gorsuch?

5 JUSTICE GORSUCH: Counsel, there's
6 been a fair amount of discussion so far this
7 morning about the Oklahoma Enabling Act and the
8 suggestion that it's inconceivable that Congress
9 would have admitted a new state to the Union
10 where a significant portion of the state would
11 have been a federal reservation subject to the
12 Major Crimes Act.

13 And I'm not sure we've given you all a
14 fair chance to have at that, so I'd -- I'd
15 appreciate a thorough response to that question.

16 MR. KANJI: Thank you, Justice
17 Gorsuch.

18 There's nothing inconsistent between
19 the advent of statehood and reservation
20 boundaries. The Solem case makes that patently
21 clear. The Cheyenne River reservation and the
22 Rosebud Sioux reservation were ordained eight
23 months before statehood. Congress clearly --
24 and they -- they accounted for about 10 percent
25 of states' land mass alone.

1 Congress clearly understood at this
2 time that states could come into being with
3 significant reservation masses. Arizona became
4 a state shortly after Oklahoma, and that was
5 27 percent of the state's land mass.

6 This Court, by that time, had
7 recognized that state jurisdiction in the
8 criminal area and the civil area could pertain
9 to non-Indians on reservations and had
10 established this framework of concurrent
11 jurisdiction that still persists to today.

12 JUSTICE GORSUCH: Thank you, counsel.

13 CHIEF JUSTICE ROBERTS: Justice
14 Kavanaugh?

15 JUSTICE KAVANAUGH: Thank you, Chief
16 Justice, and good morning.

17 As I mentioned in the last comment, I
18 think we have to understand what the situation
19 was as of 1890, '90, to understand the text of
20 these statutes, but I want to focus on the text,
21 in particular, the text of the statute that
22 abolishes the tribal courts and the text of the
23 statute that creates, in essence, municipal
24 towns within Indian territory during the 1890s
25 and what the significance of those two statutes

1 are for assessing sovereignty, because,
2 ultimately, the question, as Justice Thomas
3 suggested, I think, is what -- what's the status
4 of legislative, executive, and judicial power.

5 How should we think about those
6 statutes with the tribal courts and the
7 municipal towns?

8 MR. KANJI: Mr. Chief Justice, I need
9 just one minute to answer this question because
10 it's -- it's critical, and it's an excellent
11 question, Justice Kavanaugh. With respect to --

12 CHIEF JUSTICE ROBERTS: That's exactly
13 how much time you have.

14 (Laughter.)

15 MR. KANJI: Thank you. With respect
16 to the courts, it's critical to remember most
17 tribes did not have tribal courts at this period
18 of time. It was a rarity that the Five Tribes
19 did. So, in restricting and in eliminating
20 those tribal courts, Congress was merely putting
21 them on the same plane as other tribes.

22 And then, more generally speaking,
23 with respect to the quantum of governmental
24 powers, as you know, Justice Kavanaugh, Congress
25 has regularly adjusted the metes and bounds of

1 tribal sovereignty. That's what this Court
2 recognized in Lara but has never equated the
3 quantum of power with the existence of the
4 reservations themselves. And if this --

5 JUSTICE KAVANAUGH: On the tribal
6 courts point, the difference, I think some would
7 say, is that the other tribes were not governing
8 a jurisdiction that was predominantly
9 non-Indian, which is what was going on here.
10 Any reaction to that?

11 MR. KANJI: Yes, look at exactly what
12 happened in 1901 and thereafter with the
13 Allotment Act. The tribal courts were gone, but
14 the Secretary of the Interior continued to
15 enforce the tribe's legislative authority.
16 Section 42 made it very clear that that
17 legislative authority persisted. The Secretary
18 enforced the tribal laws. And this Court's
19 decision in Hitchcock and the Eighth Circuit's
20 decision in Buster make it crystal-clear that
21 the tribe's legislative authority persisted
22 after the Acts in question were -- were enacted.

23 JUSTICE KAVANAUGH: Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 General Mansinghani.

2 ORAL ARGUMENT OF MITHUN MANSINGHANI

3 ON BEHALF OF THE RESPONDENT

4 MR. MANSINGHANI: Thank you, Mr. Chief
5 Justice, and may it please the Court:

6 Oklahoma has jurisdiction over the
7 eastern half of the state because it never was
8 reservation land and is certainly not
9 reservation land today. To start, the land was
10 not public land preserved from sale, where title
11 remains with the United States, but instead
12 patented in fee to the Creek Nation.

13 That is why this Court in U.S. v.
14 Creek Nation called it a former dependent Indian
15 community. And under Venetie, it clearly lost
16 that status when the fee patent was dismantled.

17 Now, assuming the land was a
18 reservation, Congress stripped away all
19 semblance of reservation status. Solem asks us
20 whether Congress's purpose was to divest the
21 tribe of all its interest in the land, and,
22 here, statute after statute did precisely that.

23 The Curtis Act ended tribal governance
24 of the land, the allotment agreement divested
25 the tribe of all its rights, title, and

1 interest, and even allotments were quickly
2 stripped of federal superintendents. Everyone
3 at the time read these statutes to mean the
4 state had jurisdiction and the land was not a
5 reservation.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel. Mr. Gershengorn, in response to a
8 question from Justice Kagan, argued that
9 "dependent Indian community" was an umbrella
10 term that included reservation. I'd like to get
11 your response to that.

12 MR. MANSINGHANI: See, I think that
13 definition would completely make 1151(b)
14 surplusage. It would read it right out of the
15 statute. What this Court said in Venetie is
16 that tribes with land in fee are "unlike
17 Indians living on reservations," citing
18 Sandoval, which compares the -- the -- the
19 Pueblos, who had a dependent Indian community,
20 as essentially the same as the Five Tribes.

21 And in Creek Nation, this Court said
22 that the Five Tribes had a fee simple, not the
23 usual Indian right of occupancy, which is what
24 is typical of reservations, and it was a
25 dependent Indian community.

1 And then Congress went out and
2 codified Sandoval as a -- as a type of land
3 status separate and apart from reservations,
4 which is what this Court held in Venetie.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Justice Thomas?

8 JUSTICE THOMAS: Yes. Counsel, the --
9 I'm very interested in your point that this --
10 we should characterize this as a dependent
11 nation. First -- I'd like you, first, to say
12 whether -- why you think that and why it
13 matters.

14 And -- and opposing counsel seems to
15 think that it's irrelevant and, as he said, as I
16 recall, that it's also wrong, your assessment of
17 that. So it gives you an opportunity to both
18 respond to that and to explain to us why it is
19 important.

20 MR. MANSINGHANI: So why is it a
21 dependent Indian community. First, as I said,
22 the -- Venetie said that tribes holding their
23 land under restricted fee are unlike Indians
24 living on reservations. Sandoval and Creek
25 Nation confirmed that. And as far as -- it

1 doesn't meet the definition of a reservation.

2 I'll take the definition from Hagen v.
3 Utah, land belonging to United States that is
4 reserved from sale and set apart for public
5 uses. And in Pine River, this Court said
6 "reserved from sale" means the fee remains in
7 the United States.

8 Well, issuing a fee patent is not
9 reserving it from sale. It's selling it. Why?
10 It makes sense. Making land alienable to
11 non-Indians in a dependent Indian community ends
12 the dependent Indian community status. That's
13 what this Court said in Venetie and that's what
14 then Judge -- Judge Gorsuch at the Tenth Circuit
15 said in Hydro Resources on page 1163 in
16 Footnotes 11 and 30 of his opinion.

17 And that makes textual and logical
18 sense because there's a textual difference
19 between 1151(a), which says that a reservation
20 remains one notwithstanding the issuance of any
21 patent, and 1151(b), which doesn't contain that
22 language and defines dependent Indian
23 communities. Again, Judge Gorsuch pointed that
24 out in Hydro Resources.

25 It also makes logical sense because,

1 if what created the land was the fee patent, the
2 opposite of that, the conveyance of the fee
3 patent disestablishes. That's in accordance
4 with this Court's decision in Hagen v. Utah,
5 where it said reservation is reserving land from
6 the public domain, so restoring land to the
7 public domain ends the reservation.

8 CHIEF JUSTICE ROBERTS: Justice
9 Ginsburg?

10 JUSTICE GINSBURG: If -- if the tribe
11 -- if the reservation had been disestablished,
12 would the tribe have any governing authority
13 and, if so, over what? Would the Major Crimes
14 Act apply, or would exclusive prosecutorial
15 authority for state crimes lie in the state
16 courts?

17 MR. MANSINGHANI: So the tribe would
18 have their governments in -- in that they would
19 have control over their own internal affairs and
20 managing their property interests, which, if you
21 look to the tribal understanding at the time, as
22 we -- as we quote in our Respondent's appendix,
23 is exactly what the tribe understood their own
24 authority to be.

25 As far as would they have any

1 authority over land, there is some land that is
2 under their original fee patent, so the River
3 Spirit Casino in Tulsa is built on the riverbed
4 of the Arkansas River because that land was
5 never allotted. So they have governing
6 authority over that land, over trust land, and
7 over restricted allotments, but we think the
8 state, nonetheless, has jurisdiction over all of
9 the state pursuant to the transfer of state --
10 to -- to state jurisdiction in the Enabling Act,
11 which, you know, the -- the -- what Congress had
12 done in the Indian territory is say the Indian
13 territory is an area where Indians and
14 non-Indians are treated alike. Then the
15 Enabling Act in Section 21 extended federal law
16 except where not local -- where locally
17 inapplicable.

18 And it was locally -- the Major Crimes
19 Act was locally inapplicable in the Indian
20 territory because the 1897 Act is the act that
21 conferred jurisdiction, not the Major Crimes
22 Act, which is why Petitioner can't cite a single
23 Major Crimes Act case during this period, before
24 statehood or after.

25 JUSTICE GINSBURG: This question was

1 asked before, but what are -- what are the
2 congressional prescriptions that, in Oklahoma,
3 all residents are subject to the same law,
4 irrespective of race?

5 MR. MANSINGHANI: I think that lays
6 the framework of what Congress was trying to do
7 in make -- in -- in creating the State of
8 Oklahoma, which was to transform the governance
9 of the state and the land ownership of the
10 state, which was exclusively tribal, to a place
11 where both Indians and non-Indians could both
12 own land and be governed by the same state
13 government.

14 If you look at pages 23 -- 22 to 25 of
15 our brief, we lay out that history and -- and
16 lay out that that is what Congress said
17 explicitly in legislative reports, that's what
18 the Dallas Commission report said, and that's
19 what the tribes recognize in their own tribal
20 understanding.

21 CHIEF JUSTICE ROBERTS: Justice
22 Breyer?

23 JUSTICE BREYER: No, thank you.
24 I'll -- I'll pass.

25 CHIEF JUSTICE ROBERTS: Justice Alito?

1 Justice Alito?

2 JUSTICE ALITO: Yes. Mr. Gershengorn
3 has a section of his brief that's labeled The
4 Sky Is Not Falling, and his argument is that you
5 and the federal government are exaggerating the
6 effect of this decision, that it won't have such
7 a major impact either in the criminal or in the
8 civil area.

9 Is he right in that?

10 MR. MANSINGHANI: No, Justice Alito.
11 So let me -- let me put some -- some solid
12 numbers on this. We have currently over 1700
13 inmates whose crimes were committed in the
14 former Indian territory who identify as Native
15 American. So the state presumptively would not
16 have jurisdiction over those people and have to
17 release them.

18 And that is probably half the actual
19 number because it doesn't include crimes
20 committed against Indians, which the state would
21 not have jurisdiction over, so we're talking
22 here about potentially around 30 -- over 3,000
23 inmates we may have to turn over.

24 As far as future cases go, there were
25 32,000 felonies committed in the former Indian

1 territory, an area that is about 12 percent
2 Native American. So only including crimes
3 committed by Native Americans, that would be
4 4,000 new felonies a year that the federal
5 government would have to prosecute. Including
6 crimes that -- where the Native American is the
7 victim, you can take that to about 8,000.

8 On the civil side, what -- on the
9 civil side, what happens is it creates precisely
10 the differential legal treatment between
11 non-Indians and Indians that Congress tried to
12 abolish when it -- when it created the State of
13 Oklahoma.

14 So non-Indians would not be subject
15 to -- presumptively to state zoning law, to dog
16 law, as Justice Breyer mentioned, and that
17 creates a disparity between Indians and
18 non-Indians. So now Indian -- non-Indian
19 businesses are competing on an unequal playing
20 field with Indian businesses. That's just one
21 example.

22 The Tulsa brief points out examples
23 of, on restricted allotments, how Indians are
24 erecting billboards in residential
25 neighborhoods, are selling fireworks in them,

1 but -- but that's in the few areas, the 2
2 percent of land that remains restricted
3 allotment.

4 If the entire area is a reservation,
5 then you're -- you're creating the two separate
6 societies that Congress had sought to abolish
7 when it passed the dozen statutes it did in
8 creating Oklahoma.

9 CHIEF JUSTICE ROBERTS: Justice
10 Sotomayor?

11 JUSTICE SOTOMAYOR: Counsel, with the
12 latter part of all of the parade of horrors
13 that you set forth, Congress can come in and
14 change all of that. Congress can give the state
15 jurisdiction over anything it might be missing
16 if we were to hold this was a reservation. They
17 have done so with respect to many other
18 reservations across the country. So this is
19 easily fixable by Congress.

20 Putting that aside, what do we do with
21 the treaty language here that resulted as --
22 after the Trail of Tears with the Creek Nation?
23 That Nation was wrenched from its homeland,
24 marched to Oklahoma, and then given a treaty as
25 recompense which guaranteed its sovereignty.

1 I'm not sure that there's any other
2 dependent Indian community that depends on a
3 treaty right that extends or recognizes
4 sovereignty. So can you point to any, number
5 one? Number two, if there isn't, why aren't we
6 back at Solem and Parker? Is there anything
7 explicitly that terminated the reservation in
8 the history that you've recounted?

9 MR. MANSINGHANI: Let me try to take
10 those questions in order. Congress can't fix
11 the retroactive consequences here. As far as
12 the -- the -- the dependent Indian community, I
13 think the Pueblos have sovereignty over their
14 land. It may not have been via treaty, but the
15 idea that a dependent Indian community versus
16 reservation turns on treaty rights would
17 actually -- is actually nowhere present in this
18 Court's case law. It -- and -- and -- and on
19 top of that, would actually undermine lots of
20 reservations that were not created by treaty but
21 by executive order. So Petitioner's position
22 would actually undermine Indian Country around
23 the country.

24 And then, third, as far as specific
25 language, I think I'm going to go to Justice

1 Thomas's point, which is cession, as this Court
2 said in Rosebud Sioux, means the surrender of
3 territory or jurisdiction. And, here, you have
4 the explicit surrender of territory and
5 jurisdiction.

6 The Curtis Act said tribal law shall
7 not be enforced. The -- the -- the allotment
8 agreement said all right, title, and interest is
9 divested. You combine those two things
10 together, that's enough to say that there was no
11 reservation status. But, on top of that, you
12 have a bunch of other statutes that do even more
13 things than that, that make it absolutely clear.
14 The --

15 CHIEF JUSTICE ROBERTS: Justice Kagan?

16 JUSTICE KAGAN: General, if we could
17 go back to this dependent Indian community
18 question, which is a complicated one because, of
19 course, our -- our use of language can change
20 over such an extended period of time, but when I
21 look back at some of these cases that were
22 decided around the same time that Creek Nation
23 was decided, it seems as though the case for
24 Mr. Gershengorn's view, which is that this term
25 was meant to be an umbrella term, is -- is a

1 pretty strong one. And, specifically, a case
2 called McGowan, which relied on another case
3 called Pelican, talked about the broad use of
4 the term "dependent Indian community" and said
5 that whether it was -- whether something was a
6 reservation or a colony was irrelevant because
7 both were dependent Indian communities.

8 And then Felix Cohen says in his
9 treatise, speaking of these cases, he says --
10 and I'm quoting here -- "All Indian reservations
11 are also dependent Indian communities, unless
12 they are uninhabited."

13 So could you comment on that?

14 MR. MANSINGHANI: I think you have to
15 read it as well taking into account Venetie,
16 which says that tribal -- tribes with their land
17 in fee are unlike Indians living on
18 reservations.

19 I -- I don't think you could read
20 1151(b) as just completely the same as what's in
21 1151(a) and -- and -- and (c), but more than
22 that, a reservation has to be land reserved from
23 sale. And, here, the land wasn't reserved from
24 sale. It -- it was sold. It was -- it was
25 given to the Creek Nation in exchange for their

1 lands in fee simple.

2 So if -- if you read the --

3 JUSTICE KAGAN: Well, that's a
4 different kind of argument. Excuse me, General.
5 That's a different kind of argument. That's --
6 that's the argument that fee simple is itself
7 inconsistent with reservation status.

8 And aren't there other tribes that
9 also have been given land in fee simple that
10 have been recognized as reservations?

11 MR. MANSINGHANI: No. And thank you
12 for the opportunity to address that. So the
13 Creek Nation points to the Seneca in New York as
14 having fee simple, but they yielded their land
15 not by cession but by selling all their right to
16 private parties in 1797 and in 1842.

17 So, under their theory, all of western
18 New York and the City of Buffalo is still an
19 Indian reservation, which would be highly
20 disruptive. The -- they also point to the
21 Wyandotte, an 1817 treaty, but they neglect to
22 mention the 1818 supplemental treaty that
23 relinquished the right to a patent and instead
24 gave them a -- a reservation.

25 So our position would disrupt no land

1 anywhere. And -- and, in 2015, by the way, the
2 Second Circuit looked at the Senecas' restricted
3 fee land in the Buffalo area and it said, you
4 know what it is? It's a dependent Indian
5 community. Since then, the thought of every
6 court --

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Justice Gorsuch?

10 JUSTICE GORSUCH: Counsel, I have four
11 questions. I'm going to tick them off as fast
12 as I can, and you can choose which ones you want
13 to respond to in the time you have.

14 First, can you explain to me why the
15 fact that the land is in fee simple would lead
16 to a less stringent disestablishment test than
17 Solem? I guess I don't understand why that
18 would be the case.

19 Second, at least in the briefs, you
20 make a lot of later demographics and evidence
21 about what's happened. I -- I guess I'm
22 struggling to think why that should be relevant
23 in an interpretation of statutes from the last
24 century, especially when later demographic
25 evidence sometimes shows nothing more than that

1 states have violated Native American rights,
2 including Oklahoma's, for example, enforcement
3 of its state laws on -- on tribal lands against
4 tribal members in the past.

5 And then, third, practical
6 impossibility arguments, if you could address
7 what's wrong with what is in the brief by Robert
8 Henry about how states often work with tribal
9 entities.

10 And then, finally, fourth, I would
11 have thought that after Carpenter versus Murphy,
12 we might have seen a tsunami of -- of cases if
13 there were a real problem here that we haven't
14 -- we haven't seen.

15 So any of those you want to take up,
16 feel free.

17 MR. MANSINGHANI: I'll do my best,
18 Justice Gorsuch.

19 Why does it mean less protection?
20 We're not saying it's less protection or more
21 protection. That is a false paradigm.
22 Congressional intent controls regardless. 1151
23 is not a sliding scale of protection, with
24 reservations or dependent Indian communities
25 being more or less.

1 Now they did have more rights with
2 respect to the title, which is why Congress
3 decided they needed tribal agreement, but the
4 tribe agreed to divest itself of that title.
5 But, when it comes to dependent Indian
6 communities, what -- what you said in Hydro
7 Resources and what Venetie said in -- is that
8 dependent Indian communities, when -- when the
9 land becomes alienable, it's no longer part of
10 the dependent Indian community. And that's
11 based on the text of -- textual differences
12 between 1151(a) and 1151(b).

13 As far as what happened upon
14 statehood, we're not relying on what happened
15 100 years after statehood. We're relying upon
16 the tribal understanding, the federal
17 understanding, and the understanding of federal
18 judges during the process and as the process was
19 being implemented. Federal judges at the moment
20 of statehood transferred cases involving Indians
21 to tribal -- to state courts.

22 And the tribes understood, as we prove
23 in our Respondent's appendix, that they would be
24 subject to state law. So what we're talking
25 about here is the original tribal understanding

1 and the original public meaning, and what they
2 are trying to do is impose a modern lawyerly
3 gloss on statutes enacted 100 years ago.

4 So, if you look at the original
5 understanding of how everybody implemented it,
6 it is completely as Oklahoma is doing today.

7 So the fact that there was -- there's
8 no tsunami, we've had 178 people already seek
9 relief under Murphy, even though the Murphy
10 mandate has been stayed and the Oklahoma Court
11 of Criminal Appeals' decision is still binding
12 on state courts. So that 178 cases are just the
13 initial cracks in the dam, and that doesn't even
14 include the state court filings that our office
15 isn't -- isn't notified of. So I -- I don't
16 think that you can say that there's -- there's
17 no tsunami coming.

18 And then, as far as practical things,
19 yes, we're going to try to work with the tribes
20 as much as we can regardless of how this
21 decision comes out. We work with the tribes on
22 a day-to-day basis in doing a lot of great
23 things in the State of Oklahoma, but that
24 doesn't --

25 CHIEF JUSTICE ROBERTS: Justice

1 Kavanaugh? Justice Kavanaugh?

2 JUSTICE KAVANAUGH: Thank you, Chief
3 Justice.

4 And good morning, General. I want to
5 pick up on your comment earlier that Congress
6 made clear that Indians and non-Indians were to
7 be treated alike, and to pick up on Justice
8 Gorsuch's reference to demographics, and follow
9 up on what I said in my earlier questions.

10 My understanding is that, as of 1890,
11 this was a very unusual situation because it was
12 already predominantly non-Indian in Indian
13 territory, and that put Congress in a very
14 difficult position of figuring out what to do.
15 And I think that is necessary to understand to
16 figure out what the text of these statutes mean.

17 So I -- I guess my question on
18 demographics is people talk about the
19 demographics now. The demographics in 1890 were
20 also similar. How should that affect what we're
21 thinking about? And, more particularly, can you
22 connect that up to the text of the statutes that
23 Congress enacted in that 17-year period to
24 transition to statehood?

25 MR. MANSINGHANI: Certainly, Justice

1 Kavanaugh. I think that's the right way to look
2 at it.

3 By statehood, 90 percent of the area
4 was non-Indian. And I think what that means is
5 that you have to figure out what Congress was
6 trying to do, which is abundantly clear from the
7 -- from the history, which is Congress is trying
8 to un -- undo the tribe's exclusive ownership of
9 the land and exclusive governance of the land,
10 because there was no territorial government, to
11 give it to a new state that would both -- that
12 would govern the land of non-Indians and Indians
13 alike and where -- where non-Indians and Indians
14 alike would -- would own the land.

15 That is nothing like any of this
16 Court's previous cases. Mr. Gershengorn was not
17 able to point to any case that was anything like
18 that. And so how that connects to the statutes,
19 well, if what Congress is trying to do, and this
20 is very clear from the history, Congress was
21 trying to transform both the jurisdiction and
22 the territory -- and the land ownership. Well,
23 the Curtis Act transformed jurisdiction. It
24 said tribal law shall not be in force. And
25 the -- the -- the allotment agreement

1 transformed the land tenure.

2 Now the other side says, well, we
3 could still levy taxes. Taxes were
4 affirmatively abolished in the Five Tribes Act,
5 so they can point to no actual tribal power that
6 existed. The one power they can point to was
7 abolished in the Five Tribes Act.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 General -- Deputy General Kneedler.

11 ORAL ARGUMENT OF EDWIN S. KNEEDLER
12 FOR THE UNITED STATES, AS AMICUS CURIAE,
13 SUPPORTING THE RESPONDENT

14 MR. KNEEDLER: Thank you, Mr. Chief
15 Justice, and may it please the Court.

16 In preparing the Indian territory for
17 statehood, Congress eliminated all the hallmarks
18 of a reservation. Congress broke up the tribe's
19 national domain and extinguished the tribe's
20 interest in it. Congress likewise eliminated
21 the tribe's territorial sovereignty over that
22 area by abolishing tribal courts and prohibiting
23 enforcement of tribal law in territorial courts.

24 At the same time, Congress eliminated
25 the distinct treatment of Indians under federal

1 law and instead subjected all persons in the
2 territory, irrespective of race, to the same
3 courts and body of law largely incorporated from
4 the state law of Arkansas.

5 And Congress carried forward that
6 framework for the new state. It directed that
7 Oklahoma law would apply throughout the former
8 Indian territory and provided for the transfer
9 of criminal and civil cases involving Indians
10 and non-Indians alike to state court.

11 Congress did not then radically change
12 course and impose a -- a reservation-based
13 jurisdictional regime throughout eastern
14 Oklahoma upon statehood.

15 CHIEF JUSTICE ROBERTS: Mr. Kneedler,
16 the Creek land was owned by the tribe in
17 communal fee, unlike the situation on most
18 reservations. Could you explain the consequence
19 of that for the analysis in this case?

20 MR. KNEEDLER: Yeah, I think it's -- I
21 think it's significant and I think it strongly
22 supports disestablishment here.

23 The -- the tribe had fee ownership as
24 part of setting aside the territory for its
25 nation to be undisturbed, and the -- and the

1 treaties provided that no territory or state
2 would be created there.

3 So, after all the non-Indians moved on
4 to the territory, Congress concluded that was
5 untenable and it had to break up the Nation, and
6 that included both the fee and the -- and the
7 sovereignty.

8 And so what -- when Congress provided
9 for allotment, the tribe specifically ceded its
10 interest in the land, conveyed its interest in
11 the land to the individuals. And because the
12 fee was the hallmark of their sovereignty, what
13 made them separate, the tribe's own conveyance
14 of the fee to individual members and
15 extinguishment of all interest in it
16 extinguished their sovereignty at the same time.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Justice Thomas?

20 JUSTICE THOMAS: Yes, thank you.

21 Mr. Kneedler, the -- in Solem and
22 Parker, we had clear reservations, the -- the --
23 and it was pretty standard, and then you had an
24 effort to dispose of or to alienate surplus
25 land.

1 Here, this is entirely different.
2 Have you seen a case like this in which we have
3 applied the Solem and Parker framework?

4 MR. KNEEDLER: I -- I have not. And
5 the point you made earlier that Congress -- in
6 all those earlier cases, the Court was really
7 trying to discern the consequence of a surplus
8 land act standing alone. Here, you have other
9 statutes that specifically address those
10 consequences.

11 Each of those cases arose in deciding
12 whether federal law would apply or state law
13 would apply. Here, Congress answered that
14 question directly. There's no need to infer
15 that from the Surplus Lands Act alone.

16 Congress, in preparation for
17 statehood, provided that the same laws would
18 apply to Indians and non-Indians and then turned
19 over a territory with those attributes to the
20 new state. And immediately upon statehood, when
21 that compact of statehood was entered into, the
22 state courts started to exercise jurisdiction
23 over -- over Indians in that territory, in
24 fulfillment of Congress's preparation.

25 And that was done pursuant to an act

1 of Congress. It's not simply a consequence of
2 -- of surplus -- of surplus lands. All of that
3 is a consequence of Congress's preparation for
4 statehood.

5 JUSTICE THOMAS: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Ginsburg?

8 JUSTICE GINSBURG: What about
9 statements that an allotment conveying the title
10 and interest of the tribe, an allotment, unlike
11 cession, doesn't diminish the reservation?

12 MR. KNEEDLER: There's -- there's no a
13 priori test for that -- for that proposition.
14 The important point here is that when Congress
15 started the move towards statehood, the
16 preparation for statehood, it did that in the
17 Dawes Act in 19 -- in 1893, and that Act
18 provided that -- for the Dawes Commission to
19 negotiate for cession, for allotment, or such
20 other method that -- that could be accomplished
21 in preparation for statehood. Congress regarded
22 whatever method could be worked out as the
23 prelude to statehood.

24 And the reason for prelude to
25 statehood is because Congress was preparing to

1 substitute the state for a territory, just as it
2 has done with all territories in the past. The
3 only difference here was that there was no
4 territorial government separately established.
5 It was the territory's and the government's and
6 the tribe's, which Congress essentially
7 prevented from enforcing their laws and created
8 a situation where the land with that
9 characteristic could then be transferred to the
10 state, with Indians and non-Indians treated
11 alike.

12 JUSTICE GINSBURG: I -- I think this
13 question has been asked before, but, when the
14 tribe, not the United States, the tribe holds --
15 holds title to treaty-guaranteed land, you say
16 we should apply a less stringent standard for
17 disestablishment. Why?

18 I -- I would think that you would
19 anticipate an even stronger showing when it is
20 the tribe itself, not the United States.

21 MR. KNEEDLER: I'm -- I'm not -- I'm
22 not saying it's a less standard, it's a -- it's
23 a less stringent standard. What I'm saying is
24 that what Congress did needs to be understood in
25 the historical framework in -- in which it -- in

1 which it acted.

2 And the framework -- that was
3 understood by everybody concerned at the time of
4 statehood. This -- the -- the compact of
5 statehood that -- that provided for this, it
6 wasn't conferring jurisdiction on a state. It
7 was part of a compact under which the state came
8 into the union that in eastern Oklahoma, as was
9 prepared for by Congress, Indians and
10 non-Indians were treated alike.

11 That was the deal. And that was
12 followed through with by transferring cases
13 involving non-Indians. And the -- the prior --

14 CHIEF JUSTICE ROBERTS: Justice
15 Breyer?

16 JUSTICE BREYER: Thank you.

17 If we decide that Solem doesn't apply
18 here or there's an exception, then you would
19 win, I -- I assume. Let's assume that.

20 But would that not cause the same
21 practical problems elsewhere in the country?
22 For 35 years, people have lived under Solem. If
23 we change it or make exceptions, won't there be
24 places where people bring lawsuits, people who
25 are in prison, and they say, we were tried in

1 the wrong court? The same circumstances here,
2 we thought we were a tribe, and the prisoner
3 says, no, you're not a tribe and vice versa.

4 So why does the change -- why does the
5 parade of horrors work in only one direction?
6 Departing from Solem, you get the horrors
7 regardless.

8 MR. KNEEDLER: We -- we think this is
9 a compelling case under Solem but -- but also
10 that the Court has to consider the application
11 of Solem with respect to the unique history of
12 -- of Oklahoma. There is no other territory of
13 the United States converted to statehood among
14 the --

15 JUSTICE BREYER: But that isn't quite
16 my question. My question is: If we make an
17 exception from Solem or if we change Solem, is
18 there not likely to be the same kind of parade
19 of horrors elsewhere? I don't know the
20 history of every tribe in the United States, and
21 though you know a great deal about it, I'm not
22 sure that you do.

23 MR. KNEEDLER: But you created a --

24 JUSTICE BREYER: And --

25 MR. KNEEDLER: I'm sorry.

1 JUSTICE BREYER: No, go ahead. You
2 see the point.

3 MR. KNEEDLER: If you created an
4 exception to Solem, it would be an exception
5 that would no doubt be based on the unique
6 circumstances of this case. Again, this -- and
7 unlike in Solem and other cases, there's not
8 just a Surplus Lands Act. You have these other
9 specific statutes directed at the consequences
10 of disestablishment that -- the -- the
11 attributes of disestablishment.

12 And I'm unaware, and we haven't seen
13 in the eight or nine or ten disestablishment
14 cases this Court has had, anything resembling
15 that where there are separate statutes
16 implementing --

17 JUSTICE BREYER: Oh, would you know
18 what happened, say, in Alaska or in Hawaii or in
19 Wyoming? Have you all looked into this and said
20 if you create an exception and there's no one
21 else who could qualify for that exception?

22 MR. KNEEDLER: No one has identified.
23 We -- we -- we have not. Of course, in Alaska,
24 there are no -- no reservations at all. In
25 Wyoming, there's one reservation. So nothing

1 like this has surfaced.

2 And, again, this has been the case for
3 100 years in Oklahoma, more than 100 years,
4 since Oklahoma entered the Union on the
5 understanding that Indians and non-Indians would
6 be treated alike in the eastern half of that new
7 -- of that new state. There's --

8 CHIEF JUSTICE ROBERTS: Justice Alito?

9 MR. KNEEDLER: -- nothing like that --

10 JUSTICE ALITO: Mr. Kneedler, the
11 broad question whether the Creek Nation has a
12 reservation or whether it's a dependent Indian
13 community has all sorts of implications, but
14 what I'd like you to address is whether we can
15 decide this case on a narrow ground because,
16 after all, the only thing that's involved here
17 is a criminal prosecution.

18 So, if we were to look at the narrow
19 question whether Congress has provided for the
20 trial of cases like this one in state court,
21 what would an opinion like that look like? What
22 would it look to, the 1897 Act, the 1906
23 Enabling Act and the amendment in 1907, the way
24 these laws have been interpreted for 100 years?
25 What would an opinion like that --

1 MR. KNEEDLER: I think it would --

2 JUSTICE ALITO: -- look like?

3 MR. KNEEDLER: I think it would look
4 at all those things. And, again, what happened
5 prior to statehood is highly relevant because
6 all -- everything Congress did was in
7 preparation for statehood. So the limit -- so
8 subjecting Indians and non-Indians to the same
9 laws was part of the package that Congress
10 incorporated into the new state at statehood, so
11 the 1897 and 1904 Acts are -- are critical, and
12 the Statehood Act, which provided for the
13 transfer of cases to state jurisdiction, was
14 contemporaneously construed and applied by those
15 responsible for implementing it.

16 JUSTICE ALITO: Well, what would you
17 say to the argument that we shouldn't look to
18 the way it was interpreted right after statehood
19 or for many decades after that because those
20 people were proceeding in bad faith, the
21 statutes were clear, and they and the state was
22 simply usurping authority, and the federal
23 government was going along with it?

24 MR. KNEEDLER: There's absolutely no
25 basis for that. The -- these are federal

1 judges, federal district judges, federal Indian
2 court judges, and state court judges and -- and
3 state court prosecutors. Everybody on the
4 ground understood that.

5 There was the case in this Court
6 called Hendrix, which proceeded on the
7 assumption that an Indian in the Indian
8 territory had committed a crime. This case
9 could have been transferred to state court.
10 There was some special statute that said
11 otherwise, but the premise of the whole case was
12 that his case would have otherwise gone to state
13 court in Oklahoma.

14 And the -- it's important to
15 understand that the tribe understood that. And
16 I urge the Court to look at the statements by
17 the principal chief of the -- of the Creek
18 Nation in 1906, after the -- the Five Tribes Act
19 was passed, and he said: Upon the establishment
20 of a state government, all powers over the
21 governing, even of our landed property, will
22 cease, except insofar as the distribution of our
23 property and money is concerned, which will be
24 entirely under --

25 CHIEF JUSTICE ROBERTS: Justice --

1 Justice Sotomayor?

2 JUSTICE SOTOMAYOR: Mr. Kneedler, I
3 understood that statement was in light of the
4 existing congressional disestablishment
5 legislation that Congress subsequently changed
6 and didn't go through with. But putting that
7 aside, I -- I haven't figured out whether you've
8 accepted the -- Oklahoma's suggestion about the
9 dependent Indian community exception or
10 argument.

11 Are you endorsing that argument?

12 MR. KNEEDLER: No. Not -- not -- not
13 in terms, we're not. I mean, this Court has --
14 has discussed dependent Indian community
15 separately. But some of what informs the
16 State's argument we think is very important, as
17 I said before, that the -- the State --

18 JUSTICE SOTOMAYOR: But
19 disestablishment -- but let's go back to, is
20 there a consequence that we're unaware of? If
21 we were to describe this reservation -- this
22 Creek land as dependent Indian community --

23 MR. KNEEDLER: I --

24 JUSTICE SOTOMAYOR: -- what other
25 things would we put in question, what -- what --

1 MR. KNEEDLER: I --

2 JUSTICE SOTOMAYOR: You're saying the
3 things that inform that discussion inform your
4 disestablishment and -- I understand your
5 argument, but why aren't you endorsing the
6 dependent Indian community argument?

7 MR. KNEEDLER: Well, there could be
8 other situations. I mean, for example, in -- in
9 Oklahoma, Congress has provided for various
10 statutes to apply to tribes within their former
11 reservations. And if these were regarded as
12 dependent Indian communities, would statutes
13 like that apply? Now Congress still referred to
14 them as former reservations.

15 But one -- one point that I think is
16 -- that makes this --

17 JUSTICE SOTOMAYOR: Mr. Kneedler, I
18 hate to cut you off, but I do have one last
19 question here.

20 MR. KNEEDLER: Sure.

21 JUSTICE SOTOMAYOR: Which is what do
22 we do with -- if we say this reservation was
23 disestablished, under what theory would we
24 recognize Indian sovereignty over lands they
25 kept? It was either disestablished or not.

1 And why --

2 MR. KNEEDLER: Well --

3 JUSTICE SOTOMAYOR: -- would all the
4 complex laws that exist now giving the Indians
5 the reservation -- the casino rights and
6 jurisdiction over lands that they own and -- and
7 all of those other things, what would be the
8 basis of keeping all of that --

9 MR. KNEEDLER: Well, it would be --

10 JUSTICE SOTOMAYOR: -- if we held it
11 was disenfranchised?

12 MR. KNEEDLER: It's commonplace that
13 when a reservation is disestablished, those
14 parcels that remain in -- as allotments or
15 tribal trust land or -- or of the sort remain
16 Indian Country.

17 And so saying the reservation was
18 disestablished, which has been the assumption
19 for over 100 years, would not change anything on
20 the ground because the -- and -- and Oklahoma
21 has always been understood where allotment --
22 allotments are the fulcrum of tribal and
23 individual activities. And this --

24 CHIEF JUSTICE ROBERTS: Thank you,
25 Mr. Kneeder.

1 Justice Kagan?

2 JUSTICE KAGAN: Mr. Kneedler, I
3 understand you want to support Oklahoma's
4 position in this case, but just to follow up on
5 Justice Sotomayor's questions about what Indian
6 -- what dependent Indian communities were or
7 were thought to be in 1935, do you think that
8 those concepts were mutually exclusive, a
9 reservation and a dependent Indian community?

10 MR. KNEEDLER: No, I think there was a
11 lot of overlap and that, you know, sort of the
12 bottom -- Congress -- the Court often described
13 them in general terms as land validly set apart
14 for the use of Indians as such under the
15 superintendence of the government. And that --
16 that phrase appeared in -- in Potawatomie in
17 describing is there a difference between trusts
18 and -- and reservations.

19 So that the same general concept was
20 there, except for a reservation, as opposed to
21 an allotment, for example, it's -- it's owned
22 collectively. And so, when the land is broken
23 up, as it was here, particularly when it's
24 broken -- when it's fee land that is broken up
25 and when someone conveys their interest in fee

1 to -- to somebody else, they are conveying all
2 of their interest in it. It's not like trust
3 property on the typical reservation where the --
4 where, when it's allotted, the United States
5 retains an interest and, therefore, on behalf of
6 the tribe in some sense, retains an interest.

7 When it's fee land, it is conveyed out
8 of the tribe and the tribe loses all of its
9 interest in the land. And that's particularly
10 clear under this allotment agreement because it
11 provides that the United States also
12 extinguished -- by approving the deeds,
13 extinguished its interest in the land. And that
14 interest was a reversionary interest for when
15 the tribe was disappearing.

16 And so, by -- by relinquishing the
17 United States' interest in that land at the same
18 time it was conveyed to the individual allottee,
19 it made it clear that the tribe as sovereign was
20 being -- its sovereign authority over that land
21 was being eliminated.

22 JUSTICE KAGAN: Thank you,
23 Mr. Kneidler.

24 CHIEF JUSTICE ROBERTS: Justice
25 Gorsuch?

1 JUSTICE GORSUCH: Mr. Kneedler, tell
2 me what's wrong with this sequence of -- of --
3 of -- of my understanding, that Congress did
4 establish something it called a reservation with
5 respect to this property at some point in time,
6 that through the 1890s and the early part of the
7 last century, there was an awful lot of debate
8 about how to -- how to end that reservation,
9 whether they could end it in anticipation of
10 Oklahoma becoming part of the Union.

11 And that things got very complicated
12 and they came mighty close to ending the
13 reservation but never quite passed the kind of
14 language that we typically see when that
15 happens, reversion of all lands to the public
16 domain or cessation or anything like that.

17 In fact, the Dawes Commission
18 couldn't -- admitted it couldn't quite get
19 there. And so you're really left to rely mostly
20 on a lot of demographic evidence, both then and
21 now, which, while not everybody's acting in good
22 faith, not everybody -- not everybody's acting
23 in bad faith too, as someone pointed out.

24 And it's a mixed bag. And it's very
25 hard to make much of it. And to rely too

1 heavily on demographic evidence is dangerous
2 because you in some -- in some ways incentivize
3 people to ignore the plain terms of the law.

4 And, for example, as I pointed out
5 earlier, I think it was until the 1970s that
6 Oklahoma continued to try and enforce state law
7 against Native Americans on allotted territory.
8 I believe I have that right.

9 So tell me what's wrong with that
10 understanding, please.

11 MR. KNEEDLER: Well, first of all, I
12 think there's a big difference between
13 demographics before and after statehood. The --
14 the overwhelming presence of non-Indians in the
15 territory was precisely the reason why Congress
16 said it won't work to have tribal governments
17 running this and tribes couldn't emphasize
18 jurisdiction over the non-Indians.

19 And what Congress said is, this area
20 needs a government for and by both Indians and
21 non-Indians, and it established that in the
22 territory so that it could hand that arrangement
23 over to the new state.

24 And it was contest -- this Court's
25 decisions say that the contemporaneous

1 understanding of what Congress was doing is
2 significant. The original public meaning of
3 what -- what was done, and everybody, the state
4 understood it, the state -- or the -- the state
5 obviously implemented its compact of statehood,
6 the federal government understood it. Delix
7 Cohen understood it. The Commissioner of Indian
8 Affairs at the time said there's only a shell of
9 the government -- of the tribal government left.
10 The tribal chairman -- the tribal chief said the
11 same thing, that all we are in a position to do
12 is distribute the property.

13 And that -- that is -- and even the
14 case that Petitioners and -- and the tribe rely
15 upon, the Harjo versus Kleppe, specifically says
16 that the tribe lost its territorial sovereignty
17 even though it had the authority to run its
18 internal affairs. So --

19 CHIEF JUSTICE ROBERTS: Justice
20 Kavanaugh?

21 JUSTICE KAVANAUGH: Thank you, Chief
22 Justice.

23 And good morning, Mr. Kneedler.

24 MR. KNEEDLER: Good morning.

25 JUSTICE KAVANAUGH: I want to follow

1 up on a question Justice Sotomayor asked and one
2 Justice Gorsuch asked.

3 Justice Sotomayor mentioned quite
4 rightly the 1832 and 1833 treaties. My
5 understanding, however, was that the 1866 treaty
6 made clear that those treaty rights were, I
7 don't know if the word is superseded, but
8 diminished because the tribes had aligned and
9 made a treaty with the confederates --
10 Confederate States of America, and the treaty
11 language in 1866 said that that had unsettled
12 the treaty relations.

13 Anything you want to add on the 1866
14 treaty, the relevance of that?

15 MR. KNEEDLER: Yeah, I -- I don't
16 think it adds significantly to the point, except
17 that it -- it reflected an assertion of a
18 greater federal responsibility in the territory.
19 And it was contemplated that Congress could pass
20 laws governing the territory.

21 I did want to make one point about
22 practical consequences on the criminal side.
23 Not only would -- would this jeopardize all the
24 prior convictions on the state side, but it
25 would impose great burdens on the federal

1 government. It's estimated a 1300 percent
2 increase in criminal prosecutions brought in
3 state court.

4 And then, of course, for the state,
5 there -- there would be questions of taxation
6 and whatnot. And -- and I don't think City of
7 Sherrill, which has been suggested, is a
8 solution to that.

9 JUSTICE KAVANAUGH: Can I ask one
10 other question, Mr. Kneedler, to follow up on
11 Justice Gorsuch.

12 My understanding given the
13 demographics as of 1890 was that it would be
14 very hard to have a tribal government over the
15 whole territory because of the population at the
16 time.

17 And my question is: What tribal
18 authority, judicial authority, or legislative
19 authority to your knowledge was exercised over
20 the whole territory, including the white
21 settlers, in 1890 through 1907?

22 MR. KNEEDLER: It -- it was that the
23 tribes had no authority over the white settlers,
24 which is why Congress put in place the -- the
25 courts for the Indian territory and it put in

1 place federal law, mostly incorporating Arkansas
2 law, to govern Indians and non-Indians alike.

3 And that is the regime that Congress
4 passed on from the territory to the new state
5 and the new state received and has been
6 faithfully applying that ever since statehood.

7 And --

8 CHIEF JUSTICE ROBERTS: Thank you, Mr.
9 Kneedler.

10 Mr. Gershengorn, you have two minutes
11 for rebuttal.

12 REBUTTAL ARGUMENT OF IAN H. GERSHENGORN

13 ON BEHALF OF THE PETITIONER

14 MR. GERSHENGORN: Thank you, Mr. Chief
15 Justice. A number of things.

16 Justice Gorsuch, first, you're exactly
17 right. This Court may not be able to determine
18 which party had the better reading of events on
19 the ground 120 years ago, but it is surely
20 well-positioned to determine which party has a
21 better reading of the text. And on that score,
22 I submit this case is not close.

23 Second, Justice Ginsburg, two points.
24 With respect to fee title, that was meant to be
25 an additional protection because everyone

1 understood the -- the imperfections in Indian
2 title. The Creek didn't even get their patent
3 until 1852, 20 years after the reservation was
4 -- was given. Elimination of fee title does not
5 eliminate treaty promises. Those have to be
6 disestablished through plain text.

7 In addition, Justice Ginsburg, you're
8 exactly right, the right, title, and interest
9 language, which is the only text the other side
10 can point to, conveys only proprietary interest,
11 not sovereign interest, and so there is no
12 textual transfer.

13 There has been a lot of talk --
14 discussion this morning about irrespective of
15 race. It is -- one quick point on that.

16 When Congress -- when -- in the
17 Enabling Act in Section 13, what Congress put in
18 place was the laws of the territory of Oklahoma,
19 which did not have the supposedly magic language
20 about "irrespective of race." That suggests
21 that Congress well understood that the arguments
22 the SG and Oklahoma are making on this score are
23 -- are made up for today.

24 Fourth, there was a lot of discussion
25 about whether there's a compromise available on

1 criminal jurisdiction. There is not. Justice
2 Alito listed a number of factors for Mr.
3 Kneedler. One of the missing ones was the text.

4 The text is very clear. I was amazed
5 that Mr. Kneedler said there was no basis for
6 believing that there was -- ignoring the text.
7 Nagonset said that is true. Secretary Udall's
8 memo listed seven states in which it were true.

9 Finally, the numbers today are
10 mind-boggling in the back of the envelope. They
11 don't appear in any of the briefs. The only
12 fixed number is 178 petitions. That dwarfs
13 Ramos.

14 I understand the Court's concerns
15 about jurisdictional consequences, but there are
16 no serious disagreements that these disputes are
17 common in Indian Country --

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel. The case is submitted.

20 (Whereupon, at 11:32 a.m., the case
21 was submitted.)

22

23

24

25

Official - Subject to Final Review

1	<p>10 [3] 25:24 27:6 43:24 10:00 [2] 1:14 4:2 100 [6] 63:15 64:3 76:3,3,24 81:19 11 [2] 1:10 50:16 11:32 [1] 91:20 1151 [3] 6:18,21 62:22 1151(a) [3] 50:19 59:21 63:12 1151(b) [4] 48:13 50:21 59:20 63:12 1163 [1] 50:15 12 [1] 55:1 120 [1] 89:19 13 [1] 90:17 1300 [1] 88:1 16 [1] 36:5 17 [1] 27:2 17-year [1] 65:23 1700 [1] 54:12 178 [3] 64:8,12 91:12 1797 [1] 60:16 18-9526 [1] 4:4 1817 [1] 60:21 1818 [1] 60:22 1832 [2] 26:3 87:4 1833 [2] 26:3 87:4 1842 [1] 60:16 1852 [1] 90:3 1866 [5] 26:9,13 87:5,11,13 1890 [8] 25:21 26:1,17 44:19 65:10,19 88:13,21 1890s [2] 44:24 84:6 1893 [1] 71:17 1897 [8] 16:23 17:4,7,8 29:21 52:20 76:22 77:11 19 [1] 71:17 1901 [2] 32:14 46:12 1904 [1] 77:11 1906 [5] 9:17 32:14 35:2 76:22 78:18 1907 [3] 35:8 76:23 88:21 1908 [1] 15:13 1915 [1] 41:20 1919 [1] 41:16 1935 [1] 82:7 1948 [1] 21:16 1970s [1] 85:5</p>	<p>32,000 [1] 54:25 35 [1] 73:22</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 [1] 3:4 4,000 [1] 55:4 42 [1] 46:16 47 [2] 3:12 27:18</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 [2] 25:23 27:6 67 [1] 3:16</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>75 [1] 27:16</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8,000 [1] 55:7 85 [1] 27:12 89 [1] 3:19</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90 [3] 38:17 44:19 66:3</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m [3] 1:14 4:2 91:20 abdicated [1] 36:24 ability [1] 19:7 able [4] 13:4 39:22 66:17 89:17 abolish [2] 55:12 56:6 abolished [3] 34:23 67:4,7 abolishes [1] 44:22 abolishing [1] 67:22 above-entitled [1] 1:12 abrogate [2] 8:22,24 absence [1] 12:1 absent [2] 9:11 40:4 absolutely [4] 10:25 36:14 58:13 77:24 abundantly [1] 66:6 accepted [1] 79:8 accomplished [1] 71:20 accordance [1] 51:3 account [1] 59:15 accountable [1] 39:2 accounted [1] 43:24 accurate [1] 27:21 across [2] 37:6 56:18 Act [58] 5:17,20 14:7,23,24 15:3,22 16:11,17,18 17:5,7,8,12,17,25 29:25 30:1,11,11,19,23,24 35:2,8,9 36:5,18,18,19 37:20 43:7,12 46:13 47:23 51:14 52:10,15,19,20,20,22,23 58:6 66:23 67:4,7 70:8,15,25 71:17,17 75:8 76:22,23 77:12 78:18 90:17 acted [1] 73:1 acting [3] 37:23 84:21,22 action [2] 10:16,17 activities [2] 40:9 81:23 acts [6] 32:14 37:9,11,21 46:22 77:11 actual [2] 54:18 67:5 actually [7] 10:9,11 13:1 57:17,17,19,22 adamant [1] 6:22</p>	<p>add [2] 24:24 87:13 addition [1] 90:7 additional [1] 89:25 address [5] 25:2 60:12 62:6 70:9 76:14 addressed [2] 23:12 24:8 adds [1] 87:16 adjusted [1] 45:25 administering [1] 23:14 admitted [2] 43:9 84:18 adopted [1] 14:18 adoptions [1] 41:2 advent [1] 43:19 advocated [1] 28:14 AEDPA [1] 19:9 affairs [3] 51:19 86:8,18 affect [3] 24:10,21 65:20 affected [1] 38:18 affirmative [2] 40:4,20 affirmatively [1] 67:4 affirmed [1] 41:14 agency [2] 41:8,9 ago [2] 64:3 89:19 agree [2] 16:12 19:22 agreed [1] 63:4 agreement [6] 24:4 47:24 58:8 63:3 66:25 83:10 agreements [13] 6:4 32:22 33:4,6,7,15,19 34:5,7 41:16 42:8,11,18 ahead [1] 75:1 Alaska [2] 75:18,23 alienable [2] 50:10 63:9 alienate [1] 69:24 align [1] 26:6 aligned [2] 26:10 87:8 alike [9] 52:14 65:7 66:13,14 68:10 72:11 73:10 76:6 89:2 Alito [23] 15:20,21 16:20,22 17:23 36:4,9,10 38:15,16,22 39:16 40:11,22 53:25 54:1,2,10 76:8,10 77:2,16 91:2 Alito's [1] 29:9 allotment [17] 5:7 8:8 10:2,4 31:22 46:13 47:24 56:3 58:7 66:25 69:9 71:9,10,19 81:21 82:21 83:10 allotments [5] 48:1 52:7 55:23 81:14,22 allotted [4] 9:13 52:5 83:4 85:7 allottee [1] 83:18 allow [1] 37:18 allowed [1] 34:9 allows [1] 41:16 almost [3] 9:14 20:2,3 alone [3] 43:25 70:8,15 already [5] 12:17 17:12 19:6 64:8 65:12 alter [1] 31:20 alternatives [1] 28:15 amazed [1] 91:4 ambiguous [1] 35:16 amended [1] 36:4 amendment [1] 76:23 America [1] 87:10</p>	<p>American [4] 54:15 55:2,6 62:1 Americans [2] 55:3 85:7 amicus [6] 2:6,13 3:8,15 28:3 67:12 among [2] 16:16 74:13 amorphous [1] 28:14 amount [2] 28:22 43:6 analysis [7] 7:2 8:15,17 11:15 23:17 24:22 68:19 analyzed [1] 6:17 Ann [1] 2:5 another [1] 59:2 answer [9] 6:1 7:1 21:2 28:19 30:15 31:6 34:22 36:13 45:9 answered [1] 70:13 anticipate [1] 72:19 anticipation [1] 84:9 anyplace [2] 16:8,10 anytime [1] 11:11 apart [3] 49:3 50:4 82:13 Appeals [1] 64:11 appear [1] 91:11 APPEARANCES [1] 2:1 appeared [1] 82:16 appendix [2] 51:22 63:23 applicable [1] 29:16 application [1] 74:10 applied [6] 8:10 14:8 29:12 30:2 70:3 77:14 applies [2] 17:17 33:11 apply [17] 16:25 28:18 29:12,21 32:23 33:5 40:8 42:25 51:14 68:7 70:12,13,18 72:16 73:17 80:10,13 applying [2] 14:17 89:6 appreciate [1] 43:15 approach [1] 24:19 approving [1] 83:12 Arbor [1] 2:5 area [14] 13:21 33:13,24 38:18 44:8,8 52:13 54:8 55:1 56:4 61:3 66:3 67:22 85:19 areas [1] 56:1 aren't [3] 57:5 60:8 80:5 arguably [1] 25:20 argued [1] 48:8 argues [1] 6:17 argument [32] 1:13 3:2,5,10,13,17 4:4,7 6:19 13:24 19:11,15 20:2 21:5,7 23:8 28:1 39:11,13 47:2 54:4 60:4,5,6 67:11 77:17 79:10,11,16 80:5,6 89:12 arguments [3] 13:16 62:6 90:21 arise [2] 6:11 30:20 arising [1] 30:21 Arizona [1] 44:3 Arkansas [7] 14:18 17:9 29:11,23 52:4 68:4 89:1 arose [1] 70:11 around [4] 36:22 54:22 57:22 58:22 arrangement [1] 85:22 arrogating [1] 36:23 arsenal [1] 42:19 aside [4] 23:11 56:20 68:24 79:7</p>
2	<p>2 [1] 56:1 20 [1] 90:3 2015 [1] 61:1 2020 [1] 1:10 21 [1] 52:15 22 [1] 53:14 23 [1] 53:14 25 [1] 53:14 27 [1] 44:5 28 [1] 3:9 280 [1] 15:9</p>			
3	<p>3,000 [1] 54:22 30 [4] 25:25 27:7 50:16 54:22</p>			

Official - Subject to Final Review

<p>asks ^[1] 47:19 aspect ^[1] 13:25 assert ^[1] 42:16 assertion ^[2] 43:1 87:17 asserts ^[1] 11:16 assessing ^[1] 45:1 assessment ^[1] 49:16 assimilated ^[1] 29:23 Assimilative ^[1] 30:1 assume ^[2] 73:19,19 assumed ^[1] 22:17 assuming ^[2] 40:1 47:17 assumption ^[2] 78:7 81:18 attach ^[1] 39:14 attributes ^[2] 70:19 75:11 authority ^[22] 5:12 10:5 32:23 33:4,17 39:18 43:1 46:15,17,21 51:12,15,24 52:1,6 77:22 83:20 86:17 88:18,18,19,23 authorized ^[1] 5:11 authors ^[2] 34:6,7 available ^[1] 90:25 away ^[1] 47:18 awful ^[1] 84:7</p>	<p>bottom ^[1] 82:12 boundaries ^[6] 20:12 31:20 41:14 42:24 43:2,20 bounds ^[2] 42:17 45:25 Branch ^[2] 37:10,11 break ^[1] 69:5 Breyer ^[16] 13:13,14 34:14,15 36:1,13 39:10 53:22,23 55:16 73:15,16 74:15,24 75:1,17 brief ^[12] 24:5,6 27:9 31:4 33:22,22 34:6 42:13 53:15 54:3 55:22 62:7 briefly ^[1] 27:11 briefs ^[3] 33:23 61:19 91:11 bring ^[2] 40:21 73:24 broad ^[3] 7:21 59:3 76:11 broadly ^[3] 7:22 21:11 23:20 broke ^[1] 67:18 broken ^[3] 82:22,24,24 brought ^[1] 88:2 Buffalo ^[2] 60:18 61:3 built ^[1] 52:3 bunch ^[1] 58:12 burdens ^[1] 87:25 business ^[2] 40:13,14 businesses ^[2] 55:19,20 businessman ^[2] 39:12,12 Buster ^[1] 46:20</p>	<p>71:11,19 chairman ^[1] 86:10 challenge ^[1] 18:24 chance ^[3] 10:10 23:8 43:14 change ^[12] 5:24 24:23 39:6,7 41:13 56:14 58:19 68:11 73:23 74:4,17 81:19 changed ^[2] 14:23 79:5 changes ^[2] 28:17 30:5 characteristic ^[1] 72:9 characterize ^[1] 49:10 charged ^[1] 10:23 Cheyenne ^[1] 43:21 CHIEF ^[67] 4:3,9 6:12,16 7:25 10:14,18 13:11 15:18 18:6,11,14 20:20,25 22:24 23:3,5 25:8,11,13 27:8,22 28:4 29:7,19 30:14,25 32:18 34:12 36:9 37:19 38:14 40:23 43:3 44:13,15 45:8,12 46:24 47:4 48:6 49:5 51:8 53:21,25 56:9 58:15 61:7 64:25 65:2 67:8,14 68:15 69:17 71:6 73:14 76:8 78:17,25 81:24 83:24 86:10,19,21 89:8,14 91:18 children ^[2] 41:12,25 choose ^[2] 18:25 61:12 chose ^[2] 26:25 40:12 chunks ^[1] 19:6 Circuit ^[2] 50:14 61:2 Circuit's ^[1] 46:19 circumstances ^[2] 74:1 75:6 cite ^[2] 17:24 52:22 cites ^[1] 13:20 citing ^[2] 16:18 48:17 citizens ^[1] 34:11 City ^[4] 2:9 42:3 60:18 88:6 civil ^[10] 6:1 26:5,7 32:25 35:10 44:8 54:8 55:8,9 68:9 claim ^[3] 10:21 29:2 34:16 claiming ^[1] 12:4 claims ^[1] 6:6 clear ^[21] 4:16 6:4 14:2 16:7 18:4 32:10 40:4 42:22,23 43:21 46:16 58:13 65:6 66:6,20 69:22 77:21 83:10,19 87:6 91:4 clearly ^[11] 4:15 20:14,17 32:14 36:19,25 37:20,22 43:23 44:1 47:15 client ^[1] 10:24 clients ^[1] 23:11 close ^[2] 84:12 89:22 codified ^[1] 49:2 cognizable ^[2] 36:7,16 Cohen ^[5] 13:20 34:21 35:18 59:8 86:7 Cole ^[1] 42:13 Cole's ^[2] 24:4 33:22 colleagues ^[1] 25:17 collegively ^[1] 82:22 colloquy ^[1] 20:7 colony ^[1] 59:6 combine ^[1] 58:9 come ^[2] 44:2 56:13 comes ^[4] 30:6 42:10 63:5 64:21 coming ^[2] 35:12 64:17</p>	<p>comment ^[5] 25:16 27:9 44:17 59:13 65:5 comments ^[1] 13:23 Commission ^[3] 53:18 71:18 84:17 Commissioner ^[1] 86:7 committed ^[7] 14:25 36:6 54:13,20,25 55:3 78:8 common ^[1] 91:17 commonplace ^[1] 81:12 communal ^[2] 31:16 68:17 communities ^[11] 21:11 22:12,13 50:23 59:7,11 62:24 63:6,8 80:12 82:6 community ^[28] 6:18 7:6,9,19 20:1,10,18 21:9 47:15 48:9,19,25 49:21 50:11,12 57:2,12,15 58:17 59:4 61:5 63:10 76:13 79:9,14,22 80:6 82:9 compact ^[4] 70:21 73:4,7 86:5 compare ^[1] 12:14 compared ^[1] 22:16 compares ^[1] 48:18 comparison ^[1] 12:18 compelling ^[1] 74:9 competing ^[1] 55:19 complete ^[1] 6:1 completely ^[4] 32:3 48:13 59:20 64:6 complex ^[1] 81:4 complicated ^[2] 58:18 84:11 compositions ^[1] 37:7 compromise ^[1] 90:25 concept ^[1] 82:19 concepts ^[1] 82:8 concern ^[1] 41:3 concerned ^[2] 73:3 78:23 concerns ^[1] 91:14 concluded ^[1] 69:4 concurrent ^[3] 38:6,11 44:10 Confederacy ^[2] 26:6,11 Confederate ^[1] 87:10 confederates ^[1] 87:9 conferred ^[2] 15:9 52:21 conferring ^[2] 14:20 73:6 confirmed ^[1] 49:25 Congress ^[103] 4:13,14,17 5:3,4,6,9,15,20 6:9 7:12,13 8:19 9:16,22 10:9,13 13:17 14:3,17 15:4,14 20:12,13,14 21:12,16 22:9,11 24:8,23,24,25 25:4,7,20 26:25 29:9 31:15,19 34:1,19 37:11,16 43:8,23 44:1 45:20,24 47:18 49:1 52:11 53:6,16 55:11 56:6,13,14,19 57:10 63:2 65:5,13,23 66:5,7,19,20 67:17,18,20,24 68:5,11 69:4,8 70:5,13,16 71:1,14,21,25 72:6,24 73:9 76:19 77:6,9 79:5 80:9,13 82:12 84:3 85:15,19 86:1 87:19 88:24 89:3 90:16,17,21 Congress's ^[6] 7:21 26:19 29:17 47:20 70:24 71:3 congressional ^[5] 5:8,14 53:2 62:22 79:4</p>
B		C	
<p>back ^[7] 26:2 38:1 57:6 58:17,21 79:19 91:10 backdrop ^[1] 5:12 bad ^[3] 39:7 77:20 84:23 bag ^[1] 84:24 base ^[1] 6:19 based ^[3] 17:3 63:11 75:5 basic ^[1] 4:20 basically ^[1] 21:10 basis ^[4] 64:22 77:25 81:8 91:5 became ^[1] 44:3 become ^[1] 12:13 becomes ^[3] 32:21 33:5 63:9 becoming ^[1] 84:10 behalf ^[9] 2:4,10 3:4,12,19 4:8 47:3 83:5 89:13 believe ^[1] 85:8 believing ^[1] 91:6 belonging ^[1] 50:3 below ^[1] 4:15 benefit ^[2] 34:10 39:9 beside ^[1] 34:18 best ^[4] 7:11 24:23 33:20 62:17 better ^[2] 89:18,21 between ^[8] 42:23 43:18 50:19 55:10,17 63:12 82:17 85:12 beyond ^[2] 31:20 42:17 bicameralism ^[1] 37:13 big ^[1] 85:12 billboards ^[1] 55:24 binding ^[1] 64:11 bit ^[2] 23:6 25:15 black ^[4] 25:24 26:7,8 27:6 body ^[2] 39:2 68:3 both ^[21] 4:24 7:4 8:7 10:4 11:4,9 17:8 19:14 20:4 21:8 22:11 41:11 49:17 53:11,11 59:7 66:11,21 69:6 84:20 85:20</p>	<p>California's ^[1] 28:23 call ^[3] 20:6,9,17 called ^[7] 35:5,6 47:14 59:2,3 78:6 84:4 came ^[3] 1:12 73:7 84:12 cannot ^[1] 37:10 care ^[1] 41:2 Carpenter ^[1] 62:11 carried ^[1] 68:5 Case ^[50] 4:4,11 8:9,10,12 9:8,21 12:3,10,15,25 15:23,23 17:25 25:21 28:21 31:5 35:21 37:2,3,4,5 38:18,24 40:5,21 41:10 43:20 52:23 57:18 58:23 59:1,2 61:18 66:17 68:19 70:2 74:9 75:6 76:2,15 78:5,8,11,12 82:4 86:14 89:22 91:19,20 cases ^[44] 7:17,18 8:4 9:20,21 10:13 12:17,23 13:1,2,5 14:6,25 16:7,8 17:2 21:1,3 28:20 30:20,21 31:13,15,15 35:4,5 36:15,25 37:6 54:24 58:21 59:9 62:12 63:20 64:12 66:16 68:9 70:6,11 73:12 75:7,14 76:20 77:13 Casino ^[2] 52:3 81:5 catchall ^[1] 7:9 cause ^[3] 29:4 41:22 73:20 causes ^[1] 35:10 cease ^[1] 78:22 ceded ^[1] 69:9 century ^[3] 29:10 61:24 84:7 Certainly ^[3] 39:6 47:8 65:25 cessation ^[1] 84:16 cession ^[6] 5:7 32:24 58:1 60:15</p>	<p>children ^[2] 41:12,25 choose ^[2] 18:25 61:12 chose ^[2] 26:25 40:12 chunks ^[1] 19:6 Circuit ^[2] 50:14 61:2 Circuit's ^[1] 46:19 circumstances ^[2] 74:1 75:6 cite ^[2] 17:24 52:22 cites ^[1] 13:20 citing ^[2] 16:18 48:17 citizens ^[1] 34:11 City ^[4] 2:9 42:3 60:18 88:6 civil ^[10] 6:1 26:5,7 32:25 35:10 44:8 54:8 55:8,9 68:9 claim ^[3] 10:21 29:2 34:16 claiming ^[1] 12:4 claims ^[1] 6:6 clear ^[21] 4:16 6:4 14:2 16:7 18:4 32:10 40:4 42:22,23 43:21 46:16 58:13 65:6 66:6,20 69:22 77:21 83:10,19 87:6 91:4 clearly ^[11] 4:15 20:14,17 32:14 36:19,25 37:20,22 43:23 44:1 47:15 client ^[1] 10:24 clients ^[1] 23:11 close ^[2] 84:12 89:22 codified ^[1] 49:2 cognizable ^[2] 36:7,16 Cohen ^[5] 13:20 34:21 35:18 59:8 86:7 Cole ^[1] 42:13 Cole's ^[2] 24:4 33:22 colleagues ^[1] 25:17 collegively ^[1] 82:22 colloquy ^[1] 20:7 colony ^[1] 59:6 combine ^[1] 58:9 come ^[2] 44:2 56:13 comes ^[4] 30:6 42:10 63:5 64:21 coming ^[2] 35:12 64:17</p>	<p>comment ^[5] 25:16 27:9 44:17 59:13 65:5 comments ^[1] 13:23 Commission ^[3] 53:18 71:18 84:17 Commissioner ^[1] 86:7 committed ^[7] 14:25 36:6 54:13,20,25 55:3 78:8 common ^[1] 91:17 commonplace ^[1] 81:12 communal ^[2] 31:16 68:17 communities ^[11] 21:11 22:12,13 50:23 59:7,11 62:24 63:6,8 80:12 82:6 community ^[28] 6:18 7:6,9,19 20:1,10,18 21:9 47:15 48:9,19,25 49:21 50:11,12 57:2,12,15 58:17 59:4 61:5 63:10 76:13 79:9,14,22 80:6 82:9 compact ^[4] 70:21 73:4,7 86:5 compare ^[1] 12:14 compared ^[1] 22:16 compares ^[1] 48:18 comparison ^[1] 12:18 compelling ^[1] 74:9 competing ^[1] 55:19 complete ^[1] 6:1 completely ^[4] 32:3 48:13 59:20 64:6 complex ^[1] 81:4 complicated ^[2] 58:18 84:11 compositions ^[1] 37:7 compromise ^[1] 90:25 concept ^[1] 82:19 concepts ^[1] 82:8 concern ^[1] 41:3 concerned ^[2] 73:3 78:23 concerns ^[1] 91:14 concluded ^[1] 69:4 concurrent ^[3] 38:6,11 44:10 Confederacy ^[2] 26:6,11 Confederate ^[1] 87:10 confederates ^[1] 87:9 conferred ^[2] 15:9 52:21 conferring ^[2] 14:20 73:6 confirmed ^[1] 49:25 Congress ^[103] 4:13,14,17 5:3,4,6,9,15,20 6:9 7:12,13 8:19 9:16,22 10:9,13 13:17 14:3,17 15:4,14 20:12,13,14 21:12,16 22:9,11 24:8,23,24,25 25:4,7,20 26:25 29:9 31:15,19 34:1,19 37:11,16 43:8,23 44:1 45:20,24 47:18 49:1 52:11 53:6,16 55:11 56:6,13,14,19 57:10 63:2 65:5,13,23 66:5,7,19,20 67:17,18,20,24 68:5,11 69:4,8 70:5,13,16 71:1,14,21,25 72:6,24 73:9 76:19 77:6,9 79:5 80:9,13 82:12 84:3 85:15,19 86:1 87:19 88:24 89:3 90:16,17,21 Congress's ^[6] 7:21 26:19 29:17 47:20 70:24 71:3 congressional ^[5] 5:8,14 53:2 62:22 79:4</p>

Official - Subject to Final Review

<p>Congressman ^[1] 33:21 connect ^[1] 65:22 connects ^[1] 66:18 consent ^[3] 40:5,15,20 consequence ^[5] 68:18 70:7 71:1, 3 79:20 consequences ^[11] 23:10,22,24 24:2 25:6 41:1 57:11 70:10 75:9 87:22 91:15 consider ^[1] 74:10 considered ^[2] 5:5 40:15 consistent ^[4] 17:4 21:4,7 29:17 construction ^[2] 14:5 28:11 construed ^[1] 77:14 contain ^[1] 50:21 contemplated ^[1] 87:19 contemporaneous ^[1] 85:25 contemporaneously ^[1] 77:14 contest ^[1] 85:24 continue ^[4] 40:25 41:17 42:12,14 continued ^[2] 46:14 85:6 contract ^[2] 39:19,21 contrary ^[1] 26:24 control ^[2] 19:13 51:19 controls ^[1] 62:22 converted ^[1] 74:13 conveyance ^[2] 51:2 69:13 conveyed ^[3] 69:10 83:7,18 conveying ^[2] 71:9 83:1 conveys ^[2] 82:25 90:10 convictions ^[3] 18:24 23:12 87:24 cooperate ^[1] 41:9 cooperation ^[1] 34:4 cooperative ^[6] 32:22 33:3,6,15, 19 42:10 correct ^[4] 11:1 38:9,16,20 couldn't ^[4] 22:19 84:18,18 85:17 council ^[1] 37:19 Counsel ^[37] 6:12 8:1,3 10:15,20 12:7 13:12,12,15 15:19 18:7,14, 17 20:21 22:25 23:6 25:9 27:8,23 29:8 31:1 34:13 36:12 37:25 43:5 44:12 46:25 48:7 49:6,8,14 56:11 61:8,10 67:9 69:18 91:19 Country ^[9] 16:6 24:3,25 56:18 57: 22,23 73:21 81:16 91:17 course ^[13] 6:24 8:6 9:10 11:20 23: 21 26:24 30:3,8,22 58:19 68:12 75:23 88:4 COURT ^[71] 1:1,13 4:10 6:7,10 7:6 8:20 11:7,8,14,25 12:6,6 13:7 14: 6 15:6,24 18:2,4,19,20 19:8 22:7, 23 24:15,18 25:6 28:5 31:18,25 32:5 33:24 34:19,25 36:16,20 37: 6,8 39:23 40:6 44:6 46:1 47:5,13 48:15,21 49:4 50:5,13 58:1 61:6 64:10,14 67:15 68:10 70:6 74:1, 10 75:14 76:20 78:2,2,3,5,9,13,16 79:13 82:12 88:3 89:17 Court's ^[15] 5:25 23:22,23 24:13, 22 29:5 33:11 40:3,17 46:18 51:4 57:18 66:16 85:24 91:14 courts ^[31] 13:18 14:17,24 15:15 16:1,2 30:21 34:24,25 35:1,3,11,</p>	<p>13,14 36:8 41:18 44:22 45:6,16, 17,20 46:6,13 51:16 63:21 64:12 67:22,23 68:3 70:22 88:25 cracks ^[1] 64:13 create ^[2] 26:24 75:20 created ^[7] 51:1 55:12 57:20 69:2 72:7 74:23 75:3 creates ^[3] 44:23 55:9,17 creating ^[3] 53:7 56:5,8 creation ^[1] 28:25 Creek ^[31] 2:6 3:7 4:17,21,24 5:1 6: 20 7:12,23 21:1,8 22:15,17,17 28: 2 37:18 38:3,19 47:12,14 48:21 49:24 56:22 58:22 59:25 60:13 68: 16 76:11 78:17 79:22 90:2 Creeks ^[4] 6:21 22:21,21 26:4 crime ^[2] 10:22 78:8 Crimes ^[32] 5:17,19,20 13:18 14:3, 4,7,15 15:2 16:11,17 17:12,17,25 29:25 30:1,23,24 34:20 36:6,18, 18 43:12 51:13,15 52:18,21,23 54: 13,19 55:2,6 criminal ^[19] 4:18 5:16,25 11:12, 17 18:10 23:11 34:20,24 35:10 36: 23 44:8 54:7 64:11 68:9 76:17 87: 22 88:2 91:1 critical ^[7] 10:8 29:20 33:9 36:21 45:10,16 77:11 critically ^[1] 31:12 crystal-clear ^[2] 7:17 46:20 curiae ^[6] 2:6,13 3:8,16 28:3 67:12 currently ^[2] 42:11 54:12 Curtis ^[3] 47:23 58:6 66:23 cut ^[1] 80:18 cuts ^[1] 16:13</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C ^[3] 1:9 2:3,12 Dakota ^[2] 27:17 37:1 Dallas ^[1] 53:18 dam ^[1] 64:13 dangerous ^[1] 85:1 Dawes ^[3] 71:17,18 84:17 day ^[1] 39:13 day-to-day ^[1] 64:22 deal ^[2] 73:11 74:21 dealing ^[4] 9:2 10:1,3 30:12 debate ^[2] 17:15 84:7 decades ^[1] 77:19 decide ^[4] 34:18 38:23 73:17 76: 15 decided ^[3] 58:22,23 63:3 deciding ^[1] 70:11 decision ^[10] 4:15 5:25 14:19 42:3 46:19,20 51:4 54:6 64:11,21 decisions ^[4] 4:12,14 6:20 85:25 deeds ^[1] 83:12 defendant ^[3] 11:11,12,18 defendants ^[3] 18:22,23 19:5 defenses ^[1] 42:25 defines ^[1] 50:22 definition ^[3] 48:13 50:1,2 deliberate ^[1] 10:16 Delix ^[1] 86:6</p>	<p>demographic ^[3] 61:24 84:20 85: 1 demographics ^[7] 61:20 65:8,18, 19,19 85:13 88:13 departed ^[1] 30:13 Departing ^[1] 74:6 Department ^[1] 2:12 dependent ^[39] 6:18 7:5,8,18 19: 25 20:10,18 21:9 22:13 29:16 47: 14 48:9,19,25 49:10,21 50:11,12, 22 57:2,12,15 58:17 59:4,7,11 61: 4 62:24 63:5,8,10 76:12 79:9,14, 22 80:6,12 82:6,9 depending ^[2] 16:2 30:17 depends ^[1] 57:2 Deputy ^[2] 2:11 67:10 derive ^[1] 8:18 describe ^[2] 21:10 79:21 described ^[2] 15:7 82:12 describes ^[1] 15:2 describing ^[2] 7:19 82:17 designed ^[1] 31:25 determine ^[2] 89:17,20 determined ^[1] 35:11 difference ^[5] 46:6 50:18 72:3 82: 17 85:12 differences ^[1] 63:11 different ^[14] 11:20,21,22,22 29:15, 16 30:16 33:16 37:7,7 40:12 60:4, 5 70:1 differential ^[1] 55:10 difficult ^[1] 65:14 difficulties ^[1] 23:13 diminish ^[1] 71:11 diminished ^[2] 25:20 87:8 directed ^[2] 68:6 75:9 direction ^[1] 74:5 directly ^[3] 28:20 38:18 70:14 disagree ^[1] 18:21 disagreement ^[1] 17:16 disagreements ^[1] 91:16 disappearing ^[1] 83:15 discern ^[1] 70:7 discuss ^[1] 23:8 discussed ^[1] 79:14 discussion ^[5] 19:25 43:6 80:3 90: 14,24 disenfranchised ^[1] 81:11 disestablish ^[2] 5:4 34:2 disestablished ^[6] 51:11 80:23, 25 81:13,18 90:6 disestablishes ^[1] 51:3 disestablishment ^[11] 5:5 31:13 61:16 68:22 72:17 75:10,11,13 79: 4,19 80:4 dismantled ^[1] 47:16 disparity ^[1] 55:17 dispose ^[1] 69:24 disposing ^[1] 10:2 disposition ^[1] 8:5 dispositive ^[1] 31:5 dispute ^[1] 39:20 disputes ^[2] 6:9 91:16 disregard ^[1] 13:9</p>	<p>disrupt ^[1] 60:25 disrupted ^[1] 41:23 disruption ^[3] 5:24 19:10 42:2 disruptive ^[1] 60:20 dissolve ^[1] 32:9 dissolved ^[4] 5:9 10:11,17 32:10 distinct ^[3] 6:5 24:20 67:25 distinction ^[1] 42:23 distinguished ^[1] 24:16 distribute ^[1] 86:12 distribution ^[1] 78:22 district ^[3] 16:1 35:13 78:1 divergence ^[1] 29:5 divest ^[2] 47:20 63:4 divested ^[4] 31:8 32:3 47:24 58:9 doctrines ^[1] 33:11 document ^[1] 13:4 dog ^[1] 55:15 doing ^[5] 8:19 40:14 64:6,22 86:1 domain ^[4] 51:6,7 67:19 84:16 domestic ^[1] 22:12 done ^[9] 8:6,12 12:21 20:16 52:12 56:17 70:25 72:2 86:3 doubt ^[2] 19:10 75:5 dozen ^[1] 56:7 due ^[1] 11:5 during ^[3] 44:24 52:23 63:18 dwarfs ^[1] 91:12</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>Each ^[1] 70:11 earlier ^[5] 65:5,9 70:5,6 85:5 early ^[1] 84:6 easier ^[2] 12:3 35:21 easily ^[1] 56:19 eastern ^[6] 29:15 30:16 47:7 68: 13 73:8 76:6 EDWIN ^[3] 2:11 3:14 67:11 effect ^[2] 33:9 54:6 effectively ^[1] 31:8 effort ^[1] 69:24 eight ^[3] 29:1 43:22 75:13 Eighth ^[1] 46:19 either ^[2] 54:7 80:25 elections ^[1] 37:18 eliminate ^[2] 17:11 90:5 eliminated ^[4] 67:17,20,24 83:21 eliminating ^[1] 45:19 Elimination ^[1] 90:4 elsewhere ^[2] 73:21 74:19 emphasize ^[1] 85:17 employ ^[1] 42:20 employment ^[1] 39:21 Enabling ^[14] 14:23,24 15:22 16: 18 30:10,18 35:9 36:5,19 43:7 52: 10,15 76:23 90:17 enacted ^[4] 21:16 46:22 64:3 65: 23 end ^[2] 84:8,9 ended ^[1] 47:23 ending ^[1] 84:12 endorsing ^[2] 79:11 80:5 ends ^[3] 36:4 50:11 51:7 enforce ^[2] 46:15 85:6</p>
---	--	---	---

Official - Subject to Final Review

<p>enforced ^[3] 16:24 46:18 58:7 enforcement ^[2] 62:2 67:23 enforcing ^[1] 72:7 enough ^[1] 58:10 ensure ^[1] 25:3 entered ^[2] 70:21 76:4 entering ^[1] 40:14 enterprise ^[1] 39:14 entire ^[1] 56:4 entirely ^[3] 9:14 70:1 78:24 entities ^[1] 62:9 entitled ^[2] 18:22,24 enumerated ^[1] 5:18 envelope ^[1] 91:10 environmental ^[1] 25:2 equated ^[1] 46:2 equitable ^[1] 42:25 eras ^[1] 37:7 erecting ^[1] 55:24 error ^[1] 11:15 especially ^[2] 33:12 61:24 ESQ ^[5] 3:3,6,11,14,18 Esquire ^[2] 2:3,5 essence ^[1] 44:23 essentially ^[2] 48:20 72:6 establish ^[2] 5:3 84:4 established ^[4] 5:17 44:10 72:4 85:21 establishment ^[1] 78:19 estimated ^[1] 88:1 evaporate ^[1] 33:10 evaporated ^[1] 32:11 even ^[14] 9:8 12:3 15:12 36:25 37:19 48:1 58:12 64:9,13 72:19 78:21 86:13,17 90:2 event ^[3] 6:4 13:7 17:19 events ^[2] 18:4 89:18 everybody ^[6] 22:21 64:5 73:3 78:3 84:22 86:3 everybody's ^[2] 84:21,22 Everyone ^[2] 48:2 89:25 everything ^[3] 20:11 32:25 77:6 evidence ^[6] 7:11 19:17 61:20,25 84:20 85:1 exact ^[1] 14:20 exactly ^[10] 16:14,19 19:3 21:21,25 45:12 46:11 51:23 89:16 90:8 exaggerating ^[1] 54:5 example ^[6] 39:18 55:21 62:2 80:8 82:21 85:4 examples ^[1] 55:22 excellent ^[1] 45:10 except ^[5] 32:25 52:16 78:22 82:20 87:16 exception ^[8] 14:9 73:18 74:17 75:4,4,20,21 79:9 exceptional ^[1] 29:3 exceptionalism ^[1] 16:13 exceptions ^[1] 73:23 exchange ^[1] 59:25 excluding ^[1] 7:22 exclusive ^[5] 5:18 51:14 66:8,9 82:8 exclusively ^[1] 53:10</p>	<p>Excuse ^[1] 60:4 executive ^[6] 18:13 28:23 37:9,11 45:4 57:21 exemplifies ^[1] 42:13 exempt ^[1] 16:17 exercise ^[2] 34:3 70:22 exercised ^[1] 88:19 exist ^[3] 30:2 42:24 81:4 existed ^[1] 67:6 existence ^[1] 46:3 existential ^[1] 23:25 existing ^[6] 5:12 25:19 38:2 41:19,23 79:4 expect ^[1] 19:19 experience ^[1] 24:6 expert ^[1] 13:21 explain ^[3] 49:18 61:14 68:18 explained ^[1] 37:24 explicit ^[1] 58:4 explicitly ^[2] 53:17 57:7 exposed ^[1] 11:8 expression ^[1] 40:20 expressly ^[3] 4:25 5:22 15:6 extend ^[1] 17:8 extended ^[2] 52:15 58:20 extends ^[2] 17:7 57:3 extent ^[2] 19:10 39:17 extinguished ^[4] 67:19 69:16 83:12,13 extinguishment ^[1] 69:15</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabric ^[1] 42:10 fact ^[13] 6:21,23 8:10 11:6,24 19:16 20:11 27:5,15 28:16 61:15 64:7 84:17 factors ^[1] 91:2 fail ^[1] 9:22 fair ^[2] 43:6,14 faith ^[3] 77:20 84:22,23 faithfully ^[1] 89:6 Falling ^[1] 54:4 falls ^[1] 31:24 false ^[1] 62:21 far ^[8] 43:6 49:25 51:25 54:24 57:11,24 63:13 64:18 fast ^[1] 61:11 favor ^[2] 16:14 38:24 federal ^[49] 4:18 5:18 10:23 11:2,4,8,25 12:5 14:17,24 15:1 16:1 18:2,19 19:4,8 29:21 30:2,7,21,22 32:6 35:1,3 36:7,16,20,24 37:15,22 38:6 43:11 48:2 52:15 54:5 55:4 63:16,17,19 67:25 70:12 77:22,25 78:1,1 86:6 87:18,25 89:1 fee ^[31] 22:19 31:15 40:1,9 47:12,16 48:16,22 49:23 50:6,8 51:1,2 52:2 59:17 60:1,6,9,14 61:3,15 68:17,23 69:6,12,14 82:24,25 83:7 89:24 90:4 fee-simple ^[2] 38:3,10 feel ^[1] 62:16 Felix ^[4] 13:20 34:21 35:17 59:8 felonies ^[2] 54:25 55:4</p>	<p>few ^[2] 33:23 56:1 fewer ^[1] 13:6 field ^[1] 55:20 figure ^[3] 22:8 65:16 66:5 figured ^[1] 79:7 figuring ^[1] 65:14 filed ^[1] 33:23 filings ^[1] 64:14 Finally ^[4] 5:23 15:4 62:10 91:9 find ^[1] 36:2 finish ^[1] 36:13 fireworks ^[1] 55:25 first ^[15] 4:4,21 9:10 15:7 20:5 24:12 28:8 34:23 39:5 49:11,11,21 61:14 85:11 89:16 Five ^[10] 26:4,5 30:11 37:20 45:18 48:20,22 67:4,7 78:18 fix ^[2] 25:5 57:10 fixable ^[1] 56:19 fixed ^[1] 91:12 flows ^[1] 11:11 focus ^[2] 41:1 44:20 follow ^[5] 23:10 65:8 82:4 86:25 88:10 followed ^[1] 73:12 Footnotes ^[1] 50:16 force ^[2] 33:8 66:24 form ^[1] 40:19 formalize ^[1] 41:15 former ^[8] 34:1,1 47:14 54:14,25 68:7 80:10,14 forms ^[1] 11:4 forth ^[1] 56:13 forward ^[2] 19:17 68:5 foster ^[1] 41:2 four ^[3] 4:20 37:5 61:10 fourth ^[2] 62:10 90:24 framework ^[9] 8:10 28:7,10 44:10 53:6 68:6 70:3 72:25 73:2 frankly ^[1] 41:6 free ^[1] 62:16 fulcrum ^[1] 81:22 fulfillment ^[1] 70:24 full ^[1] 33:8 fundamental ^[4] 4:12 28:11,17 37:9 further ^[1] 23:8 fused ^[1] 28:10 future ^[1] 54:24</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gauntlet ^[1] 37:12 gave ^[2] 34:19 60:24 General ^[13] 2:8,11 29:25 30:24 36:18 47:1 58:16 60:4 65:4 67:10,10 82:13,19 generally ^[2] 23:16 45:22 GERSHENGORN ^[38] 2:3 3:3,18 4:6,7,9 6:14 7:3 8:13 10:7,16,25 11:10 12:8,24 14:1 16:9,21 17:6 18:3,9,12 19:2 20:3,24 21:6,21,25 22:6 23:19 25:14 27:10 48:7 54:2 66:16 89:10,12,14 Gershengorn's ^[1] 58:24</p>	<p>getting ^[2] 19:16 31:16 Ginsburg ^[16] 10:19,20 11:2 12:7,9 18:18 32:19,20 51:9,10 52:25 71:7,8 72:12 89:23 90:7 give ^[3] 23:7 56:14 66:11 given ^[10] 32:25 35:17,17,18 43:13 56:24 59:25 60:9 88:12 90:4 gives ^[1] 49:17 giving ^[2] 30:8 81:4 gloss ^[1] 64:3 goods ^[1] 39:22 Gorsuch ^[20] 7:7 23:1,2,4,5 25:10 43:4,5,17 44:12 50:14,23 61:9,10 62:18 83:25 84:1 87:2 88:11 89:16 Gorsuch's ^[1] 65:8 got ^[1] 84:11 govern ^[3] 4:24 66:12 89:2 governance ^[4] 34:10 47:23 53:8 66:9 governed ^[1] 53:12 governing ^[6] 28:7 46:7 51:12 52:5 78:21 87:20 government ^[19] 5:10 13:20 26:23 32:6 36:24 53:13 54:5 55:5 66:10 72:4 77:23 78:20 82:15 85:20 86:6,9,9 88:1,14 government's ^[1] 72:5 governmental ^[2] 32:15 45:23 governments ^[2] 51:18 85:16 governors ^[1] 34:1 grant ^[1] 26:3 grants ^[2] 26:13 39:14 great ^[4] 13:20 64:22 74:21 87:25 greater ^[1] 87:18 ground ^[7] 18:5 24:18 41:8 76:15 78:4 81:20 89:19 groups ^[1] 7:20 guaranteed ^[2] 4:23 56:25 guess ^[5] 9:18 11:23 61:17,21 65:17</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habeas ^[1] 19:19 Hagen ^[2] 50:2 51:4 half ^[4] 29:15 47:7 54:18 76:6 hallmark ^[2] 5:5 69:12 hallmarks ^[1] 67:17 hand ^[1] 85:22 hands ^[1] 27:13 happen ^[3] 24:2 26:22 41:25 happened ^[18] 14:14,14 17:14,16,23,24 27:2 32:4 37:1,2,3,4 46:12 61:21 63:13,14 75:18 77:4 happens ^[3] 30:3 55:9 84:15 happy ^[1] 26:9 hard ^[3] 12:10 84:25 88:14 Harjo ^[1] 86:15 harm ^[1] 11:11 harmed ^[1] 11:6 harmless ^[1] 11:15 harsh ^[1] 11:3 hate ^[1] 80:18 Hawaii ^[1] 75:18</p>
---	--	--	---

Official - Subject to Final Review

<p>Health [1] 41:8 hear [2] 4:3 13:25 heard [2] 23:6,13 hearing [1] 19:14 heavily [1] 85:1 heed [3] 37:8,15,21 heinous [1] 12:11 held [3] 35:11 49:4 81:10 Hello [1] 23:2 hence [1] 28:14 Hendrix [1] 78:6 Henry [1] 62:8 high [1] 18:25 higher [2] 18:19 19:5 highly [2] 60:19 77:5 historical [1] 72:25 historically [1] 27:21 history [1] 25:15 27:3,20 28:22 29:3 53:15 57:8 66:7,20 74:11,20 hit [1] 20:5 Hitchcock [1] 46:19 hold [2] 37:18 56:16 holding [1] 49:22 holds [2] 72:14,15 homeland [1] 56:23 honestly [2] 40:18 42:8 Honor [28] 7:3 8:13,16 9:19 10:8 11:1,10 12:4,24 14:1 15:4 16:9,18 17:7,14 18:3 19:3 21:22 23:19 27: 11 31:12 33:8 35:20 38:9,21 39:5, 25 41:5 Honor's [3] 9:9 19:22 27:19 horribles [5] 23:16 56:12 74:5,6, 19 however [1] 87:5 Human [1] 41:9 hundreds [7] 12:10,11,19,23,25 13:1,5 Hydro [4] 7:8 50:15,24 63:6</p>	<p>incentivize [1] 85:2 include [2] 54:19 64:14 included [4] 30:23 36:17 48:10 69: 6 includes [2] 22:1,1 including [4] 55:2,5 62:2 88:20 incompatibility [1] 27:20 inconceivable [1] 43:8 inconsistent [5] 21:4 27:15 35:24 43:18 60:7 incorporated [2] 68:3 77:10 incorporating [1] 89:1 increase [1] 88:2 increased [1] 32:24 Indeed [7] 5:4 7:24 12:2,5 14:24 23:25 24:24 Indian [77] 6:18 7:6,9,19 16:5 20:1, 10,18 21:9 22:13 24:3,25 25:22, 25 26:17 27:5,7,12,13 34:25,25 35:14 38:7 41:12 44:24 47:14 48: 9,19,23,25 49:21 50:11,12,22 52: 12,12,19 54:14,25 55:18,20 57:2, 12,15,22 58:17 59:4,7,10,11 60:19 61:4 62:24 63:5,8,10 65:12 67:16 68:8 76:12 78:1,7,7 79:9,14,22 80: 6,12,24 81:16 82:5,6,9 86:7 88:25 90:1 91:17 Indian-related [1] 21:13 Indians [31] 6:23 9:15 26:21 30:6, 7 35:23 48:17 49:23 52:13 53:11 54:20 55:11,17,23 59:17 63:20 65: 6 66:12,13 67:25 68:9 70:18,23 72:10 73:9 76:5 77:8 81:4 82:14 85:20 89:2 indicates [2] 24:5,7 individual [3] 69:14 81:23 83:18 individuals [2] 31:17 69:11 infer [1] 70:14 influence [1] 24:10 inform [3] 23:17 80:3,3 informs [1] 79:15 initial [1] 64:13 initially [1] 5:6 inmates [2] 54:13,23 insofar [1] 78:22 instead [5] 5:7,9 47:11 60:23 68:1 intact [2] 32:1 37:1 integrates [1] 21:23 intend [1] 14:3 intent [1] 62:22 interest [20] 47:21 48:1 58:8 67:20 69:10,10,15 71:10 82:25 83:2,5,6, 9,13,14,14,17 90:8,10,11 interested [3] 31:6 34:16 49:9 interesting [1] 31:12 interests [2] 41:24 51:20 Interior [1] 46:14 internal [2] 51:19 86:18 interpret [2] 18:10 24:13 interpretation [2] 23:18 61:23 interpreted [2] 76:24 77:18 interrupt [1] 9:25 involve [2] 31:13 33:15 involved [8] 8:4 12:19 28:20,21,25</p>	<p>38:8 41:11 76:16 involving [4] 8:7 63:20 68:9 73:13 irrelevant [7] 20:2,4,4,5,24 49:15 59:6 irrespective [7] 16:25 29:13,22 53:4 68:2 90:14,20 isn't [6] 9:22 16:6 57:5 64:15,15 74:15 issuance [1] 50:20 issue [4] 8:22,24 9:5 38:3 issues [3] 6:2,2 38:7 issuing [1] 50:8 itself [7] 6:21 17:19 24:15 32:11 60:6 63:4 72:20</p> <hr/> <p style="text-align: center;">J</p> <p>jeopardize [1] 87:23 JIMCY [1] 1:3 job [2] 24:13 25:5 John [1] 37:5 Judge [5] 7:7,7 50:14,14,23 judges [6] 63:18,19 78:1,1,2,2 judgments [1] 5:14 judicial [2] 45:4 88:18 jurisdiction [47] 4:19 5:16,18,21 11:13,16,17 12:1 14:21 15:5,8,8, 10,12,14,16 33:18 34:9,24 35:23 36:23 38:7,11 40:21 41:17,18 44: 7,11 46:8 47:6 48:4 52:8,10,21 54: 16,21 56:15 58:3,5 66:21,23 70: 22 73:6 77:13 81:6 85:18 91:1 jurisdictional [3] 6:8 68:13 91:15 jurisdictions [1] 33:16 juror [1] 11:21 Justice [209] 2:12 4:3,9 6:12,16 7: 25 8:2,3 9:24 10:14,18,19,20 11:2 12:7,9 13:11,13,14 15:18,20,21 16:20,22 17:23 18:6,8,11,14,16,17, 17 19:24 20:7,20,22,23,25 21:18, 23 22:4,24 23:1,2,3,3,5 25:8,10,11, 11,13 27:8,22 28:5,6,15 29:7,8,20 30:14,25 31:2,3 32:17,18,18,20 34:12,14,15 36:1,4,9,9,10,11,12, 13,14 37:25 38:1,12,14,14,16,22 39:10,16 40:11,22,23,23,24 42:1 43:3,3,5,16 44:12,13,13,15,16 45: 2,8,11,12,24 46:5,23,24 47:5 48:6, 8 49:5,7,8 51:8,8,10 52:25 53:21, 21,23,25,25 54:1,2,10 55:16 56:9, 9,11 57:25 58:15,15,16 60:3 61:7, 9,10 62:18 64:25,25 65:1,2,3,7,25 67:8,15 68:15 69:17,19,20 71:5,6, 6,8 72:12 73:14,14,16 74:15,24 75:1,17 76:8,8,10 77:2,16 78:25, 25 79:1,2,18,24 80:2,17,21 81:3, 10,24 82:1,2,5 83:22,24,24 84:1 86:19,19,21,22,25 87:1,2,3 88:9, 11 89:8,15,16,23 90:7 91:1,18</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan [15] 20:22,23 21:18,23 22:4 40:23,24 42:1 48:8 58:15,16 60:3 82:1,2 83:22 KANJI [25] 2:5 3:6 27:24 28:1,4 29:</p>	<p>19 30:18 31:3,11 33:7 35:20 36:2, 14 38:9,20 39:4,25 40:17,24 41:5 42:5 43:16 45:8,15 46:11 Kavanaugh [16] 25:12,13 44:14, 15 45:11,24 46:5,23 65:1,1,2 66:1 86:20,21,25 88:9 keeping [1] 81:8 key [1] 80:25 key [4] 8:14,14 9:3 26:5 kind [6] 11:15 19:20 60:4,5 74:18 84:13 kinds [3] 9:5 19:18 24:2 Kleppe [1] 86:15 KNEEDLER [45] 2:11 3:14 67:10, 11,14 68:15,20 69:21 70:4 71:12 72:21 74:8,23,25 75:3,22 76:9,10 77:1,3,24 79:2,12,23 80:1,7,17,20 81:2,9,12,25 82:2,10 83:23 84:1 85:11 86:23,24 87:15 88:10,22 89: 9 91:3,5 knowledge [1] 88:19 knows [1] 25:4</p> <hr/> <p style="text-align: center;">L</p> <p>label [1] 7:9 labeled [1] 54:3 lacks [3] 11:13 32:23 33:4 land [73] 5:1,13 8:5,8 9:11,13 10:3, 4,5 26:4 31:8,9 38:10 40:10 43:25 44:5 47:8,9,9,10,17,21,24 48:4,16 49:2,23 50:3,10 51:1,5,6 52:1,1,4, 6,6 53:9,12 56:2 57:14 59:16,22, 23 60:9,14,25 61:3,15 63:9 66:9,9, 12,14,22 67:1 68:16 69:10,11,25 70:8 72:8,15 79:22 81:15 82:13, 22,24 83:7,9,13,17,20 landed [1] 78:21 lands [16] 4:23,24 7:11,12,14 9:3 40:1,3 60:1 62:3 70:15 71:2 75:8 80:24 81:6 84:15 language [15] 5:5 7:4 15:8,22 16: 18,21 17:11 50:22 56:21 57:25 58: 19 84:14 87:11 90:9,19 Lara [1] 46:2 large [2] 19:6,18 largely [2] 39:8 68:3 last [6] 35:16 39:11 44:17 61:23 80: 18 84:7 later [3] 12:22 61:20,24 latter [1] 56:12 Laughter [1] 45:14 law [46] 5:11 12:12 14:2,17,18 15:9 17:9,9,13 29:16,21,22,23 30:1,2, 16,20,22 32:23 33:5,10,11 35:4,5 39:8,24 40:7 52:15 53:3 55:15,16 57:18 58:6 63:24 66:6 67:23 68: 1,3,4,7 70:12,12 85:3,6 89:1,2 laws [15] 16:23 29:11,11,14 35:6 39:2 46:18 62:3 70:17 72:7 76:24 77:9 81:4 87:20 90:18 lawsuits [1] 73:24 lawyerly [1] 64:2 lay [2] 53:15,16 lays [1] 53:5</p>
---	---	---	---

Official - Subject to Final Review

<p>lead ^[3] 26:14,15 61:15 leads ^[1] 33:14 learn ^[1] 38:25 lease ^[1] 39:21 least ^[4] 11:3,9 19:8 61:19 leaving ^[1] 6:8 left ^[2] 84:19 86:9 legal ^[1] 55:10 legislate ^[5] 5:13 7:21 21:12 22:9, 11 legislation ^[3] 29:9,18 79:5 legislative ^[6] 45:4 46:15,17,21 53:17 88:18 legislators ^[1] 34:2 less ^[8] 20:9 61:16 62:19,20,25 72:16,22,23 letter ^[1] 13:22 levy ^[1] 67:3 lie ^[1] 51:15 life ^[1] 35:21 light ^[1] 79:3 likely ^[1] 74:18 likes ^[1] 29:2 likewise ^[1] 67:20 limit ^[1] 77:7 limited ^[2] 19:9 22:2 listed ^[2] 91:2,8 little ^[4] 23:6 39:6,7 40:18 live ^[1] 38:17 lived ^[1] 73:22 living ^[5] 38:5,25 48:17 49:24 59:17 local ^[1] 52:16 locally ^[3] 52:16,18,19 logical ^[2] 50:17,25 longer ^[1] 63:9 look ^[15] 9:7 11:18 46:11 51:21 53:14 58:21 64:4 66:1 76:18,21,22 77:2,3,17 78:16 looked ^[3] 13:21 61:2 75:19 loses ^[1] 83:8 lost ^[2] 47:15 86:16 lot ^[8] 27:1 61:20 64:22 82:11 84:7, 20 90:13,24 lots ^[2] 26:7 57:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made ^[9] 18:4 46:16 65:6 69:13 70:5 83:19 87:6,9 90:23 magic ^[2] 9:1 90:19 main ^[2] 6:2 9:10 maintain ^[1] 32:7 maintained ^[2] 6:22 32:15 Major ^[21] 5:17,20 10:21 13:18 14:7 15:2,7 16:11,17 17:12,17,19,25 30:23 36:18 43:12 51:13 52:18,21, 23 54:7 majority ^[1] 40:2 managing ^[1] 51:20 mandate ^[1] 64:10 MANSINGHANI ^[15] 2:8 3:11 47:1, 2,4 48:12 49:20 51:17 53:5 54:10 57:9 59:14 60:11 62:17 65:25 many ^[9] 6:24 13:2 33:3,3,12 34:7</p>	<p>38:7 56:17 77:19 marched ^[1] 56:24 mass ^[2] 43:25 44:5 masses ^[1] 44:3 Mast ^[1] 28:21 materialized ^[1] 19:21 matter ^[2] 1:12 26:12 matters ^[2] 25:2 49:13 McGIRT ^[2] 1:3 4:5 McGowan ^[1] 59:2 MCI ^[1] 24:6 mean ^[9] 9:24 10:6 11:21 17:15 48:3 62:19 65:16 79:13 80:8 meaning ^[4] 16:7,11 64:1 86:2 means ^[3] 50:6 58:2 66:4 meant ^[4] 31:19 32:6 58:25 89:24 mechanisms ^[1] 41:15 meet ^[1] 50:1 member ^[2] 39:19,22 members ^[5] 9:15 33:25 38:19 62:4 69:14 memo ^[1] 91:8 mention ^[1] 60:22 mentioned ^[3] 44:17 55:16 87:3 merely ^[1] 45:20 metes ^[1] 45:25 method ^[2] 71:20,22 Michigan ^[1] 2:5 might ^[4] 18:22 42:25 56:15 62:12 mighty ^[1] 84:12 mind-boggling ^[1] 91:10 minor ^[1] 13:15 minute ^[1] 45:9 minutes ^[1] 89:10 misplaced ^[1] 41:7 missing ^[2] 56:15 91:3 Mississippi ^[1] 37:4 MITHUN ^[3] 2:8 3:11 47:2 mixed ^[1] 84:24 modern ^[1] 64:2 moment ^[2] 30:4 63:19 Monday ^[1] 1:10 money ^[1] 78:23 months ^[2] 29:1 43:23 morning ^[10] 4:4,21 13:14 25:14 43:7 44:16 65:4 86:23,24 90:14 most ^[3] 14:5 45:16 68:17 mostly ^[2] 84:19 89:1 move ^[1] 71:15 moved ^[1] 69:3 much ^[10] 8:6,6,11,19 9:23 19:25 35:21 45:13 64:20 84:25 municipal ^[2] 44:23 45:7 murder ^[1] 12:20 murderers ^[1] 19:15 Murphy ^[4] 19:14 62:11 64:9,9 Muscogee ^[3] 2:6 3:7 28:2 must ^[1] 4:15 mutually ^[1] 82:8</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Nagonset ^[2] 15:6 91:7 name ^[1] 14:16 narrow ^[3] 21:15 76:15,18</p>	<p>Nation ^[30] 2:6 3:7 4:21 6:20 21:1, 8 24:5 28:2 36:22 37:18 38:3 41:9, 17,20,24 42:16 47:12,14 48:21 49:11,25 56:22,23 58:22 59:25 60:13 68:25 69:5 76:11 78:18 national ^[2] 37:19 67:19 Nationwide ^[1] 36:22 Native ^[6] 54:14 55:2,3,6 62:1 85:7 Nebraska ^[1] 37:2 necessarily ^[1] 31:5 necessary ^[1] 65:15 need ^[2] 45:8 70:14 needed ^[2] 5:2 63:3 needs ^[4] 20:13,14 72:24 85:20 neglect ^[1] 60:21 negotiate ^[1] 71:19 negotiating ^[1] 42:7 neighborhoods ^[1] 55:25 Neither ^[1] 26:21 never ^[8] 4:17,18 18:9 37:24 46:2 47:7 52:5 84:13 New ^[23] 15:11,11,25 16:1 22:12 26:8,13,15,25,25 43:9 55:4 60:13, 18 66:11 68:6 70:20 76:6,7 77:10 85:23 89:4,5 next ^[1] 27:2 nine ^[1] 75:13 nominally ^[1] 26:18 non-Indian ^[7] 31:23 39:23 40:12 46:9 55:18 65:12 66:4 non-Indians ^[29] 26:23 30:9 33:13 38:4,4 39:18 40:8 44:9 50:11 52:14 53:11 55:11,14,18 65:6 66:12, 13 68:10 69:3 70:18 72:10 73:10, 13 76:5 77:8 85:14,18,21 89:2 non-member ^[1] 39:20 none ^[1] 14:10 nonetheless ^[1] 52:8 nor ^[2] 23:24,25 normal ^[1] 30:12 noted ^[1] 40:2 Nothing ^[14] 5:1 9:1 14:22 28:9,15 29:3,24 30:10 35:24 43:18 61:25 66:15 75:25 76:9 notified ^[1] 64:15 notwithstanding ^[1] 50:20 nowhere ^[1] 57:17 number ^[9] 19:5,24 39:5 54:19 57:4,5 89:15 91:2,12 numbers ^[5] 13:3 19:12,18 54:12 91:9</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>obviously ^[2] 17:20 86:5 occupancy ^[1] 48:23 odd ^[1] 26:17 offenses ^[2] 12:12,20 office ^[1] 64:14 officials ^[4] 37:10,12,16,22 often ^[4] 19:4 30:1 62:8 82:12 OKLAHOMA ^[49] 1:6 2:9,9 4:5,19 5:16 14:10 15:13,15,22 16:7,13, 15 17:21 24:4 25:1 29:4,12,15 30:17 34:10 35:7,13 36:16 37:17 43:</p>	<p>7 44:4 47:6 53:2,8 55:13 56:8,24 64:6,10,23 68:7,14 73:8 74:12 76:3,4 78:13 80:9 81:20 84:10 85:6 90:18,22 Oklahoma's ^[4] 5:23 62:2 79:8 82:3 Oklahoma-specific ^[1] 25:1 old ^[1] 22:12 on-the-ground ^[1] 23:13 one ^[27] 10:2 13:15,15 14:4 15:25 16:1 19:19 45:9 50:20 55:20 57:5 58:18 59:1 67:6 74:5 75:20,22,25 76:20 80:15,15,18 87:1,21 88:9 90:15 91:3 ones ^[2] 61:12 91:3 only ^[13] 5:7 8:4 10:1 29:1 55:2 72:3 74:5 76:16 86:8 87:23 90:9,10 91:11 opening ^[1] 31:22 operative ^[1] 36:3 opinion ^[5] 8:16 9:9 50:16 76:21, 25 opportunity ^[2] 49:17 60:12 opposed ^[1] 82:20 opposing ^[1] 49:14 opposite ^[3] 14:20 16:19 51:2 option ^[1] 27:1 options ^[2] 26:19,22 oral ^[9] 1:13 3:2,5,10,13 4:7 28:1 47:2 67:11 ordain ^[1] 41:20 ordained ^[1] 43:22 order ^[2] 57:10,21 orders ^[1] 28:24 ordinary ^[1] 28:10 original ^[5] 52:2 63:25 64:1,4 86:2 other ^[30] 6:2 7:16,20 9:21 10:12 14:13 21:14,17,18 22:18 25:16 26:22 28:20 45:21 46:7 56:17 57:1 58:12 60:8 67:2 70:8 71:20 74:12 75:7,8 79:24 80:8 81:7 88:10 90:9 otherwise ^[2] 78:11,12 out ^[20] 8:16 12:4 18:18 22:9 27:4 48:14 49:1 50:24 53:15,16 55:22 64:21 65:14,16 66:5 71:22 79:7 83:7 84:23 85:4 outside ^[1] 38:2 over ^[42] 5:13,18 11:17 21:11 26:23 27:2 28:24 30:7,8 35:23 38:7 39:18 47:6 51:13,19 52:1,6,6,7,8 54:12,16,21,22,23 56:15 57:13 58:20 67:21 70:19,23,23 78:20 80:24 81:6,19 83:20 85:18,23 88:14,19, 23 overlap ^[1] 82:11 overlook ^[1] 12:1 overly ^[1] 23:25 override ^[1] 18:5 overrides ^[1] 5:20 overwhelming ^[1] 85:14 own ^[11] 17:17 32:7,23 33:5 51:19, 23 53:12,19 66:14 69:13 81:6 owned ^[2] 68:16 82:21 ownership ^[4] 53:9 66:8,22 68:23</p>
---	--	--	--

Official - Subject to Final Review

P			R
<p>package [1] 77:9 PAGE [2] 3:2 50:15 pages [1] 53:14 paid [1] 37:8 pales [1] 12:18 parade [4] 23:16 56:12 74:5,18 paradigm [1] 62:21 parcels [1] 81:14 parents [1] 41:24 Parker [12] 6:4 8:4 9:1,4,9,12 10:1 24:15 37:3 57:6 69:22 70:3 Parker/Solem [2] 8:15 28:9 part [7] 56:12 63:9 68:24 73:7 77:9 84:6,10 particular [2] 13:25 44:21 particularly [5] 11:17 41:1 65:21 82:23 83:9 parties [1] 60:16 party [2] 89:18,20 pass [2] 53:24 87:19 passed [5] 29:9 56:7 78:19 84:13 89:4 past [3] 29:6 62:4 72:2 patent [9] 22:19 47:16 50:8,21 51:1,3 52:2 60:23 90:2 patented [1] 47:12 patently [1] 43:20 pay [3] 31:15 37:15,21 Pelican [1] 59:3 penalties [6] 11:2,9,19,23 18:18 19:4 pending [1] 15:24 people [11] 38:8,17,23 54:16 64:8 65:18 73:22,24,24 77:20 85:3 perceives [1] 25:6 percent [16] 25:23,24,25 27:6,6,7,12,16,18 38:17 43:24 44:5 55:1 56:2 66:3 88:1 perfectly [1] 15:3 period [4] 45:17 52:23 58:20 65:23 persisted [2] 46:17,21 persists [1] 44:11 persons [3] 16:25 29:13 68:1 pertain [1] 44:8 Petitioner [10] 1:4 2:4,7 3:4,9,19 4:8 28:3 52:22 89:13 Petitioner's [1] 57:21 Petitioners [1] 86:14 petitions [2] 19:19 91:12 phrase [1] 82:16 pick [3] 20:23 65:5,7 Pine [1] 50:5 place [9] 24:23 32:14 40:1,9 42:11 53:10 88:24 89:1 90:18 placement [1] 41:12 placements [3] 41:19,21,23 places [1] 73:24 plain [10] 8:21,22,24 9:4,7 13:9 20:8 35:22 85:3 90:6 plane [1] 45:21 play [1] 42:14</p>	<p>playing [1] 55:19 plays [1] 42:4 please [7] 4:10 28:5 34:2 36:13 47:5 67:15 85:10 point [30] 8:9,14,15 9:3,18,25 10:9 13:15 17:22 20:5 22:3 33:20 34:18 46:6 49:9 57:4 58:1 60:20 66:17 67:5,6 70:5 71:14 75:2 80:15 84:5 87:16,21 90:10,15 pointed [8] 8:16 12:4 14:12,13 18:18 50:23 84:23 85:4 points [6] 4:20 28:8 34:21 55:22 60:13 89:23 pool [1] 11:21 population [3] 25:23,24 88:15 portion [2] 17:13 43:10 position [6] 10:22 57:21 60:25 65:14 82:4 86:11 possessions [1] 38:4 Potawatomie [1] 82:16 potential [1] 11:22 potentially [1] 54:22 power [15] 7:21 21:12 22:9,11 25:3,3 30:7,8 32:16 34:20 35:4 45:4 46:3 67:5,6 powers [5] 21:13 28:12 37:20 45:24 78:20 practical [5] 23:9 62:5 64:18 73:21 87:22 practice [3] 35:17 36:21 37:8 pre-statehood [2] 17:14,16 precedent [2] 7:2,4 precedents [2] 40:4,18 precise [1] 30:15 precisely [3] 47:22 55:9 85:15 predicted [1] 19:21 predominantly [5] 25:22 26:16,18 46:8 65:12 prelude [2] 71:23,24 premise [4] 32:13 33:17 34:8 78:11 preparation [6] 70:16,24 71:3,16,21 77:7 prepared [1] 73:9 preparing [2] 67:16 71:25 prescriptions [1] 53:2 presence [1] 85:14 present [1] 57:17 presentation [1] 37:13 preserve [1] 9:17 preserved [4] 5:9 10:9 37:20 47:10 presumptively [4] 40:7,8 54:15 55:15 pretty [2] 59:1 69:23 prevail [2] 29:14 33:9 prevented [1] 72:7 previous [1] 66:16 principal [1] 78:17 principles [3] 28:10,12,18 prior [4] 29:10 73:13 77:5 87:24 priori [1] 71:13 prison [1] 73:25 prisoner [1] 74:2</p>	<p>private [1] 60:16 probably [1] 54:18 probate [1] 15:14 problem [3] 22:20,20 62:13 problems [1] 73:21 proceed [1] 40:5 proceeded [2] 35:10 78:6 proceeding [1] 77:20 proceedings [1] 41:2 process [3] 11:5 63:18,18 prohibiting [1] 67:22 promises [1] 90:5 proper [1] 31:16 property [6] 51:20 78:21,23 83:3 84:5 86:12 proposition [2] 4:12 71:13 proprietary [1] 90:10 prosecute [1] 55:5 prosecuted [4] 14:16 16:3,3 18:1 prosecution [3] 10:21 15:2 76:17 prosecutions [5] 12:11,19 36:5,17 88:2 prosecutor [1] 10:23 prosecutorial [1] 51:14 prosecutors [1] 78:3 protection [5] 62:19,20,21,23 89:25 protections [1] 11:5 prove [1] 63:22 provided [11] 5:7 14:8 68:8 69:1,8 70:17 71:18 73:5 76:19 77:12 80:9 provides [2] 13:8 83:11 Public [8] 15:9 47:10 50:4 51:6,7 64:1 84:15 86:2 Pueblos [5] 22:10,16,19 48:19 57:13 purchase [1] 39:21 purpose [1] 47:20 purposes [2] 5:10 32:7 purported [2] 52:9 70:25 put [9] 19:17 23:11 34:24 54:11 65:13 79:25 88:24,25 90:17 putting [3] 45:20 56:20 79:6</p>	<p>race [11] 17:1,4,10 29:13,17,22 30:17 53:4 68:2 90:15,20 radical [2] 28:9 29:24 radically [1] 68:11 railroads [2] 26:14,14 raise [1] 18:22 Ramos [6] 5:25 12:15,17 13:6,8 91:13 rapists [1] 19:16 rarity [1] 45:18 rather [2] 11:7 35:16 react [1] 25:17 reaction [1] 46:10 read [7] 21:7 35:18 48:3,14 59:15,19 60:2 reading [3] 24:11 89:18,21 real [1] 62:13 really [4] 38:12 42:8 70:6 84:19 reason [8] 8:20 13:8 20:8 22:16 37:9,14 71:24 85:15 reasons [3] 9:10 19:9 24:12 REBUTTAL [3] 3:17 89:11,12 recall [1] 49:16 received [1] 89:5 recent [1] 12:15 recognize [2] 53:19 80:24 recognized [3] 44:7 46:2 60:10 recognizes [1] 57:3 recompense [1] 56:25 recounted [1] 57:8 redoing [1] 12:16 reduction [1] 10:5 refer [1] 6:24 reference [2] 13:19 65:8 referred [4] 6:25 7:14 15:21 80:13 reflected [1] 87:17 refuted [1] 27:15 regard [1] 31:19 regarded [2] 71:21 80:11 regarding [1] 28:12 regardless [8] 17:9,13,15 20:6 22:14 62:22 64:20 74:7 regime [2] 68:13 89:3 regularly [1] 45:25 regulatory [1] 6:2 rejected [1] 5:6 relations [2] 33:25 87:12 relationship [1] 41:11 relationships [1] 42:13 release [1] 54:17 relevance [1] 87:14 relevant [5] 4:22 6:9 27:7 61:22 77:5 relied [1] 59:2 relief [2] 19:8 64:9 relinquished [1] 60:23 relinquishing [1] 83:16 rely [3] 84:19,25 86:14 relying [2] 63:14,15 remain [4] 33:8 39:8 81:14,15 remained [3] 27:12 32:1 37:1 remaining [2] 26:22 32:24</p>
		<p style="text-align: center;">Q</p>	

Official - Subject to Final Review

<p>remains [4] 47:11 50:6,20 56:2 remarkable [1] 33:22 remember [2] 19:12 45:16 remove [2] 26:20,20 report [1] 53:18 reports [1] 53:17 Representative [1] 24:4 required [4] 8:21,22,24 9:4 requirement [1] 20:9 resembling [1] 75:14 reservation [86] 4:17,22 5:1,4,13 6:6,8,19,23 7:1,10,13,14 13:17 20:10,18 22:18,22 24:16 25:19,20 27:14,16,18 29:1 31:10,20 32:7,8,11 33:10 34:3,17,17 35:25 38:11 39:1,10,14 40:3,12,14 41:14 42:24 43:11,19,21,22 44:3 47:8,9,18,19 48:5,10 50:1,19 51:5,7,11 56:4,16 57:7,16 58:11 59:6,22 60:7,19,24 67:18 71:11 75:25 76:12 79:21 80:22 81:5,13,17 82:9,20 83:3 84:4,8,13 90:3 reservation-based [1] 68:12 reservations [28] 21:24 22:1,2 27:5,20 31:25 33:15 36:25 38:2,5 44:9 46:4 48:17,24 49:3,24 56:18 57:20 59:10,18 60:10 62:24 68:18 69:22 75:24 80:11,14 82:18 reserved [5] 4:22 50:4,6 59:22,23 reserves [1] 30:7 reserving [2] 50:9 51:5 residential [1] 55:24 residents [1] 53:3 resolve [2] 6:7,10 resolved [3] 4:11 6:3 24:3 resolves [1] 31:18 Resources [4] 7:8 50:15,24 63:7 respect [16] 7:16 15:12 24:9 32:2 33:12,13 40:9 42:1 45:11,15,23 56:17 63:2 74:11 84:5 89:24 respected [1] 5:14 respond [3] 23:15 49:18 61:13 Respondent [7] 1:7 2:10,14 3:12,16 47:3 67:13 Respondent's [2] 51:22 63:23 response [3] 43:15 48:7,11 responses [1] 39:5 responsibility [1] 87:18 responsible [1] 77:15 restoring [1] 51:6 restricted [6] 7:11 49:23 52:7 55:23 56:2 61:2 restricting [1] 45:19 result [1] 5:24 resulted [1] 56:21 retain [2] 31:9 41:18 retained [1] 30:21 retains [2] 83:5,6 retial [1] 12:5 retroactive [1] 57:11 retroactivity [1] 12:18 return [1] 29:8 reverse [1] 12:8 reversed [1] 4:16</p>	<p>reversion [1] 84:15 reversionary [1] 83:14 rhetoric [2] 5:23 41:7 rid [1] 31:16 rightly [1] 87:4 rights [12] 4:13 8:21,23,23,25 20:16 47:25 57:16 62:1 63:1 81:5 87:6 rights-of-way [1] 26:14 rigorous [1] 11:24 risk [1] 18:25 River [4] 43:21 50:5 52:2,4 riverbed [1] 52:3 RIYAZ [3] 2:5 3:6 28:1 Robert [1] 62:7 ROBERTS [51] 4:3 6:12,16 7:25 10:14,18 13:11 15:18 18:6,11,14 20:20 22:24 23:3 25:8,11 27:8,22 29:7 30:14,25 32:18 34:12 36:9 38:14 40:23 43:3 44:13 45:12 46:24 48:6 49:5 51:8 53:21,25 56:9 58:15 61:7 64:25 67:8 68:15 69:17 71:6 73:14 76:8 78:25 81:24 83:24 86:19 89:8 91:18 role [2] 42:2,14 room [1] 42:6 Rosebud [2] 43:22 58:2 routinely [5] 6:3 24:2,3,7,25 rubric [1] 31:24 rule [1] 14:19 ruling [2] 23:10,22 rulings [1] 23:23 run [2] 37:12 86:17 running [1] 85:17</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale [7] 4:23 47:10 50:4,6,9 59:23,24 same [23] 9:11 11:9,9,19 20:19 24:19 45:21 48:20 53:3,12 58:22 59:20 67:24 68:2 69:16 70:17 73:20 74:1,18 77:8 82:19 83:17 86:11 Sandoval [9] 6:20 7:16,17 21:1,8 22:7 48:18 49:2,24 saying [10] 16:15 17:2 29:10 34:2 36:19 62:20 72:22,23 80:2 81:17 says [11] 16:6,21 35:2,9 50:19 59:8,9,16 67:2 74:3 86:15 scale [2] 42:9 62:23 score [2] 89:21 90:22 Second [7] 5:3 9:13 14:12 24:15 61:2,19 89:23 Secretary [3] 46:14,17 91:7 Section [7] 36:5 41:16,20 46:16 52:15 54:3 90:17 see [6] 11:18 14:6 19:19 48:12 75:2 84:14 seek [2] 19:8 64:8 seem [1] 13:22 seems [5] 12:2 27:1 34:23 49:14 58:23 seen [4] 62:12,14 70:2 75:12 selling [3] 50:9 55:25 60:15 semblance [1] 47:19</p>	<p>Seneca [1] 60:13 Senecas' [1] 61:2 senior [1] 33:25 sense [7] 21:15 22:23 27:19 50:10,18,25 83:6 sent [2] 14:24 15:25 sentence [1] 19:7 separate [4] 49:3 56:5 69:13 75:15 separated [1] 24:16 separately [2] 72:4 79:15 separation [1] 28:12 sequence [1] 84:2 series [5] 8:7 10:3 28:16,21,23 serious [2] 23:25 91:16 served [1] 19:6 Services [1] 41:9 set [7] 11:20,22 14:17 20:12 50:4 56:13 82:13 setting [1] 68:24 settlements [2] 26:15,15 settlers [3] 31:23 88:21,23 seven [1] 91:8 several [1] 24:12 sexual [1] 12:20 Seymour [1] 37:4 SG [1] 90:22 shall [7] 15:10,11,15 16:24 35:10 58:6 66:24 shared [3] 33:18 34:8,9 sharing [1] 41:17 shell [1] 86:8 Sherrill [6] 42:3,5,6,19,22 88:7 shortly [1] 44:4 shouldn't [2] 24:21 77:17 showing [1] 72:19 shows [1] 61:25 side [11] 5:25 6:1 14:13 34:8 42:9 55:8,9 67:2 87:22,24 90:9 significance [1] 44:25 significant [6] 25:23 39:9 43:10 44:3 68:21 86:2 significantly [1] 87:16 similar [1] 65:20 simple [6] 48:22 60:1,6,9,14 61:15 simply [5] 31:21 36:2 41:22 71:1 77:22 Since [3] 61:5 76:4 89:6 single [2] 17:25 52:22 Sioux [2] 43:22 58:2 sites [1] 31:23 situation [9] 12:15 25:18 26:2,17 42:15 44:18 65:11 68:17 72:8 situations [2] 33:12 80:8 Sky [1] 54:4 slaves [2] 26:7,8 sliding [1] 62:23 small [1] 31:23 societies [1] 56:6 sold [1] 59:24 Solem [21] 8:4,10 9:2,4 28:25 37:2 43:20 47:19 57:6 61:17 69:21 70:3 73:17,22 74:6,9,11,17,17 75:4,7 solemnly [1] 4:23</p>	<p>Solicitor [2] 2:8,11 solid [1] 54:11 solution [1] 88:8 somebody [1] 83:1 someone [2] 82:25 84:23 sometimes [1] 61:25 sorry [2] 18:11 74:25 sort [3] 21:15 81:15 82:11 sorts [1] 76:13 Sotomayor [22] 18:8,16,17 19:24 36:11,12,15 37:25 38:12 56:10,11 79:1,2,18,24 80:2,17,21 81:3,10 87:1,3 Sotomayor's [1] 82:5 sought [2] 5:6 56:6 South [2] 27:17 37:1 sovereign [10] 4:13 6:9 8:23,25 11:12,16 20:16 83:19,20 90:11 sovereignty [19] 6:5 8:8 24:17 31:3 32:2,3 34:4 42:16 45:1 46:1 56:25 57:4,13 67:21 69:7,12,16 80:24 86:16 speaking [3] 4:14 45:22 59:9 special [2] 8:18 78:10 specific [2] 57:24 75:9 specifically [4] 59:1 69:9 70:9 86:15 Spirit [1] 52:3 squarely [1] 31:24 standard [7] 21:24 22:1,2 69:23 72:16,22,23 standing [1] 70:8 start [2] 6:14 47:9 started [2] 70:22 71:15 state [119] 5:19,21 6:16 11:4,4,7 12:12 13:2,18,18 14:8 15:1,5 16:2,4,5,6 17:22 18:20 19:17 25:4,19 26:25,25 28:13 29:2 30:1,8,19,20 32:21,23 33:3,4,6,10,11,24 34:1,4,7,16,19,20 35:4,5,12,23 36:7,17 37:3,23 38:6 39:8 40:5 41:8,16,18 42:18 43:9,10 44:4,7 47:7 48:4 51:15,15 52:8,9,9,10 53:7,9,10,12 54:15,20 55:12,15 56:14 62:3 63:21,24 64:12,14,23 66:11 68:4,6,10 69:1 70:12,20,22 72:1,10 73:6,7 76:7,20 77:10,13,21 78:2,3,9,12,20 79:17 85:6,23 86:3,4,4 87:24 88:3,4 89:4,5 State's [6] 7:2 19:10,13 42:20 44:5 79:16 statehood [49] 5:17 14:7,11,14,15 15:25 17:3,18,19,24 27:11,14,17,17,21 29:2 30:4,5 37:17 43:19,23 52:24 63:14,15,20 65:24 66:3 67:17 68:14 70:17,20,21 71:4,15,16,21,23,25 73:4,5 74:13 77:5,7,10,12,18 85:13 86:5 89:6 statement [1] 79:3 statements [2] 71:9 78:16 STATES [35] 1:1,14 2:13 3:15 5:19 14:9,16,21 15:9 16:16,24 26:9 29:11 30:9 35:14 36:22 37:5 42:7,9,20 44:2 47:11 50:3,7 62:1,8 67:</p>
--	---	---	--

Official - Subject to Final Review

<p>12 72:14,20 74:13,20 83:4,11 87:10 91:8 states' [2] 43:25 83:17 stations [1] 42:21 status [16] 6:6 24:17 27:14 30:5, 12 31:10 35:25 39:10,15 45:3 47:16,19 49:3 50:12 58:11 60:7 statute [13] 7:13,15 10:2 16:23 21:16 23:18 29:21 44:21,23 47:22,22 48:15 78:10 statutes [25] 4:25 8:7 10:4 18:10 25:2 28:17,21,23 44:20,25 45:6 48:3 56:7 58:12 61:23 64:3 65:16, 22 66:18 70:9 75:9,15 77:21 80:10,12 statutory [2] 14:5 28:11 stayed [1] 64:10 stays [1] 25:3 steps [1] 9:16 still [8] 31:9 32:6 34:15 44:11 60:18 64:11 67:3 80:13 straight [1] 28:6 straightforward [1] 14:5 stringent [2] 41:16 72:16,23 stripped [2] 47:18 48:2 strong [1] 59:1 stronger [4] 9:8,20 10:12 72:19 strongly [1] 68:21 struggling [1] 61:22 subject [8] 15:1 16:11 39:1,8 43:11 53:3 55:14 63:24 subjected [1] 68:1 subjecting [1] 77:8 submit [1] 89:22 submitted [2] 91:19,21 subsequently [1] 79:5 substitute [1] 72:1 subvert [1] 37:10 subverting [1] 37:16 successors [1] 35:12 sue [1] 39:23 suggested [3] 13:3 45:3 88:7 suggestion [2] 43:8 79:8 suggests [3] 11:25 30:11 90:20 superintendence [1] 82:15 superintendents [1] 48:2 superseded [1] 87:7 supplemental [1] 60:22 support [2] 7:5 82:3 supporting [6] 2:7,14 3:8,16 28:3 67:13 supports [1] 68:22 supposed [2] 21:19 30:13 supposedly [1] 90:19 SUPREME [2] 1:1,13 surely [1] 89:19 surfaced [1] 76:1 surplus [9] 8:5 9:3 10:3 69:24 70:7,15 71:2,2 75:8 surplusage [1] 48:14 surprised [1] 38:25 surrender [2] 58:2,4</p>	<p>Tacoma [1] 24:6 talked [1] 59:3 tax [1] 6:2 taxation [2] 27:13 88:5 taxes [2] 67:3,3 Tears [1] 56:22 technical [1] 21:15 ten [1] 75:13 Tennessee [1] 27:16 Tenth [1] 50:14 tenure [1] 67:1 term [11] 7:18 17:18 21:3,9,19 22:13,23 48:10 58:24,25 59:4 terminated [2] 4:17 57:7 terms [4] 9:2 79:13 82:13 85:3 terrible [2] 12:20 23:9 terrific [2] 41:10 42:12 territorial [8] 15:24 29:22 35:3 66:10 67:21,23 72:4 86:16 territories [1] 72:2 territory [45] 6:17 16:24 17:21 25:21,22 26:18 27:5,7,12 32:24 34:25 35:6,13,15 44:24 52:12,13,20 54:14 55:1 58:3,4 65:13 66:22 67:16 68:2,8,24 69:1,4 70:19,23 72:1 74:12 78:8 85:7,15,22 87:18,20 88:15,20,25 89:4 90:18 territory's [1] 72:5 test [5] 20:19 28:13 29:5 61:16 71:13 text [35] 4:15,16,24 8:21,22,24 9:4, 7 13:9 18:5 20:8,17 24:10,11,12, 13,22,23,24 35:22 36:3,3 44:19,20, 21,22 63:11 65:16,22 89:21 90:6, 9 91:3,4,6 textual [4] 50:17,18 63:11 90:12 themselves [3] 9:15 36:23 46:4 theory [2] 60:17 80:23 there's [34] 8:6 9:1 11:15 12:16 17:16 19:25 25:19 26:8 29:3 30:10 38:6,10 41:3,6 42:23 43:5,18 50:18 57:1 64:7,16,16 70:14 71:12, 12 73:18 75:7,20,25 76:7 77:24 85:12 86:8 90:25 thereafter [2] 18:1 46:12 therefore [1] 83:5 therein [2] 16:25 29:13 thinking [1] 65:21 thinks [1] 34:22 Third [6] 5:15 9:16 14:22 24:21 57:24 62:5 Thomas [14] 8:2,3 9:24 20:7 28:15 31:2,3 32:17 45:2 49:7,8 69:19,20 71:5 Thomas's [3] 28:7 38:1 58:1 thorough [1] 43:15 therein [2] 16:25 29:13 thinking [1] 65:21 thinks [1] 34:22 Third [6] 5:15 9:16 14:22 24:21 57:24 62:5 Thomas [14] 8:2,3 9:24 20:7 28:15 31:2,3 32:17 45:2 49:7,8 69:19,20 71:5 Thomas's [3] 28:7 38:1 58:1 thorough [1] 43:15 though [5] 37:19 58:23 64:9 74:21 86:17 three [3] 9:9 28:8 34:21 throughout [3] 24:5 68:7,13 thumb [1] 42:8 tick [1] 61:11 tie [1] 38:13 title [15] 31:8,14,16,17 47:10,25 58:</p>	<p>8 63:2,4 71:9 72:15 89:24 90:2,4, 8 today [6] 23:7 44:11 47:9 64:6 90:23 91:9 together [1] 58:10 took [4] 9:16 10:13 32:13 42:18 top [2] 57:19 58:11 towards [1] 71:15 town [1] 31:23 towns [3] 26:16 44:24 45:7 tradition [1] 26:24 Trail [1] 56:22 transfer [7] 5:15 15:7 30:19 52:9 68:8 77:13 90:12 transferred [11] 4:18 15:13,14 17:20,21 18:1 35:22 36:20 63:20 72:9 78:9 transferring [2] 31:17 73:12 transfers [4] 5:21 9:5 15:5 20:15 transform [2] 53:8 66:21 transformation [1] 31:14 transformed [2] 66:23 67:1 transition [1] 65:24 treated [8] 16:8,10 17:3 52:14 65:7 72:10 73:10 76:6 treaties [6] 4:22,25 26:3 32:10 69:1 87:4 treatise [1] 59:9 treatment [2] 55:10 67:25 treaty [21] 6:25 8:21,23 23:18 26:8, 13 56:21,24 57:3,14,16,20 60:21, 22 87:5,6,9,10,12,14 90:5 treaty-guaranteed [1] 72:15 tremendous [1] 28:22 trial [2] 11:25 76:20 tribal [50] 5:12 9:14 14:3 15:17 26:23 32:15,21 33:3,24 34:3,23 39:22,23,24 40:7,21 43:1 44:22 45:6, 17,20 46:1,5,13,18 47:23 51:21 53:10,19 58:6 59:16 62:3,4,8 63:3, 16,21,25 66:24 67:5,22,23 81:15, 22 85:16 86:9,10,10 88:14,17 tribal-state [1] 6:3 tribe [42] 5:9,10 9:11,12,14,17 10:6, 10,11 22:14 25:4 31:7 32:9 33:6 38:19 39:19 40:7 47:21,25 51:10, 12,17,23 63:4 68:16,23 69:9 71:10 72:14,14,20 74:2,3,20 78:15 83:6,8,8,15,19 86:14,16 tribe's [9] 39:17 46:15,21 66:8 67:18,19,21 69:13 72:6 tribes [34] 7:9,20,22 21:10,10 26:4, 5,6,7,10 30:11 37:20 42:7 45:17, 18,21 46:7 48:16,20,22 49:22 53:19 59:16 60:8 63:22 64:19,21 67:4,7 78:18 80:10 85:17 87:8 88:23 tried [7] 11:7,12 12:17 14:4 20:7 55:11 73:25 trivial [1] 23:24 true [3] 24:11 91:7,8 trust [4] 31:15 52:6 81:15 83:2 trusts [1] 82:17 truth [1] 13:1 try [7] 13:18 14:21 34:20 35:4 57:9</p>	<p>64:19 85:6 trying [8] 22:8 53:6 64:2 66:6,7,19, 21 70:7 tsunami [4] 19:20 62:12 64:8,17 Tulsa [4] 23:14 39:11 52:3 55:22 turn [2] 29:10 54:23 turned [1] 70:18 turns [1] 57:16 two [11] 19:24 21:1 24:16,19 28:10 44:25 56:5 57:5 58:9 89:10,23 type [1] 49:2 typical [2] 48:24 83:3 typically [2] 30:6 84:14</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S. [4] 17:8,8,13 47:13 Udall's [1] 91:7 ultimately [1] 45:2 umbrage [1] 42:18 umbrella [3] 21:19 48:9 58:25 un [1] 66:8 unlike [1] 48:16 unanimously [1] 37:6 unaware [2] 75:12 79:20 unclear [1] 40:18 under [29] 6:18 7:13,14 17:25 21:12,13 28:13 29:25 30:18,20,22 33:11 36:17 39:23 40:3 41:19 47:15 49:23 52:2 60:17 64:9 67:25 73:7, 22 74:9 78:24 80:23 82:14 83:10 undermine [2] 57:19,22 underpinned [2] 33:18 34:5 understand [13] 10:7 11:3 32:12 38:2,6 44:18,19 61:17 65:15 78:15 80:4 82:3 91:14 understanding [14] 51:21 53:20 63:16,17,17,25 64:5 65:10 76:5 84:3 85:10 86:1 87:5 88:12 understood [16] 21:2 22:21 44:1 51:23 63:22 72:24 73:3 78:4,15 79:3 81:21 86:4,6,7 90:1,21 undisturbed [1] 68:25 undo [2] 20:13 66:8 undone [1] 12:13 unequal [1] 55:19 uninhabited [1] 59:12 union [5] 16:16 43:9 73:8 76:4 84:10 unique [2] 74:11 75:5 uniquely [1] 16:16 UNITED [23] 1:1,14 2:13 3:15 5:19 14:9,16 16:24 26:9 29:11 35:14 37:5 47:11 50:3,7 67:12 72:14,20 74:13,20 83:4,11,17 unless [1] 59:11 unlike [5] 49:23 59:17 68:17 71:10 75:7 unsettled [1] 87:11 untenable [1] 69:5 until [2] 85:5 90:3 unusual [1] 65:11 up [19] 14:17 20:12,23 31:23 36:4 39:13 62:15 65:5,7,9,22 67:18 69:5 82:4,23,24 87:1 88:10 90:23</p>
--	--	---	--

T

Official - Subject to Final Review

<p>urge ^[1] 78:16 uses ^[1] 50:5 using ^[5] 7:18 21:3,8,14 22:23 usual ^[1] 48:23 usurping ^[1] 77:22 Utah ^[2] 50:3 51:4</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>validly ^[1] 82:13 various ^[3] 28:14 41:15 80:9 Venetie ^[8] 7:7 47:15 48:15 49:4, 22 50:13 59:15 63:7 versa ^[1] 74:3 versus ^[4] 4:5 57:15 62:11 86:15 via ^[1] 57:14 vice ^[1] 74:3 victim ^[1] 55:7 view ^[2] 12:12 58:24 violated ^[1] 62:1</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wake ^[1] 39:12 wanted ^[2] 13:17 27:3 wants ^[1] 24:24 War ^[3] 26:5,7 33:1 Washington ^[4] 1:9 2:3,12 37:3 watershed ^[1] 30:4 way ^[9] 9:12 30:12 35:18 39:3 42: 17 61:1 66:1 76:23 77:18 ways ^[3] 12:3 39:9 85:2 well-positioned ^[1] 89:20 western ^[1] 60:17 whatever ^[1] 71:22 whatnot ^[1] 88:6 Whereupon ^[1] 91:20 Wherever ^[1] 38:10 whether ^[25] 7:12 9:2,19 13:16 20: 9 21:4 22:9 31:14,19 32:6 34:17, 19 42:24 47:20 49:12 59:5,5 70: 12 76:11,12,14,19 79:7 84:9 90: 25 white ^[6] 25:22 26:16,18 27:6 88: 20,23 whites ^[1] 26:20 whole ^[5] 8:7 22:3 78:11 88:15,20 will ^[25] 14:6 19:4,5,8,18 23:21 29: 15,16 33:8 37:10,16 39:6,7,8,9,17, 22 40:22 41:13,23,25 42:12,14 78: 21,23 win ^[3] 18:23 28:13 73:19 within ^[5] 7:20 40:21 43:1 44:24 80:10 witnesses ^[1] 12:22 word ^[1] 87:7 words ^[6] 21:14,17,18 22:18 33:21, 21 work ^[6] 8:19 62:8 64:19,21 74:5 85:16 worked ^[1] 71:22 working ^[2] 38:5 42:12 wrenched ^[1] 56:23 Wyandotte ^[1] 60:21 Wyoming ^[2] 75:19,25</p> <hr/> <p style="text-align: center;">Y</p> <hr/>	<p>year ^[1] 55:4 years ^[11] 12:21 27:2 63:15 64:3 73:22 76:3,3,24 81:19 89:19 90:3 yielded ^[1] 60:14 York ^[4] 15:11,11 60:13,18</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoning ^[1] 55:15</p>
---	---